

# EXHIBIT E-1

**In The Matter Of:**

***BLUE SPIKE LLC***

***v.***

***TEXAS INSTRUMENTS***

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***PETER CASSIDY - Vol. 1***

***April 1, 2015***

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***ATTORNEYS' EYES ONLY***

**MERRILL CORPORATION**

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UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF TEXAS

TYLER DIVISION

- - - - - x

BLUE SPIKE LLC

Plaintiff

vs.

Case No. 6:12-CV-00499-MHS

TEXAS INSTRUMENTS

Defendant

- - - - - x

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VIDEO DEPOSITION of PETER CASSIDY

Wednesday, April 1, 2015 - 10:15 a.m.

Proskauer Rose

1 International Place

Boston, Massachusetts

--- Jill K. Ruggieri, RPR, RMR, FCRR, CRR ---

SF-028683

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21

22

23

24

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3 WITNESS:

4

5 PETER CASSIDY

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7 Examination by Mr. Ramsey 6

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11 E X H I B I T S

12

13 Exhibit 50 Corporate agreement 9

14 Exhibit 51 Email, June 14, 2002 23

15 Exhibit 52 Blue Spike, Inc. Corporate 27

16 Profile, August 2000

17 Exhibit 53 Email, August 23, 2000 39

18 Exhibit 54 Email, August 23, 2000 48

19 Exhibit 55 Email, August 22, 2000 55

20 Exhibit 56 Email, August 22, 2000 64

21 Exhibit 57 Email, September 13, 2000 72

22 Exhibit 58 Email, December 5, 2000 87

23 Exhibit 59 Email, December 5, 2000 93

24 Exhibit 60 Email, February 5, 2001 104

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1	P R O C E E D I N G S	10:09:22
2	THE VIDEOGRAPHER: This begins	10:21:19
3	Tape No. 1 of the videotaped deposition of	10:21:19
4	Peter Cassidy in the case of Blue Spike LLC	10:21:22
5	versus Texas Instruments, in the US District	10:21:27
6	Court for the Eastern District of Texas,	10:21:29
7	Tyler Division, Case No. 6:12-CV-00499-MHS.	10:21:33
8	Today's date is April 1, 2015,	10:21:44
9	and the time on the video monitor is 10:15 a.m.	10:21:48
10	The video operator today is Tom	10:21:58
11	Tracy. The video deposition is being held at	10:22:00
12	Proskauer Rose in Boston, Massachusetts.	10:22:05
13	Counsel please voice-identify	10:22:08
14	yourself and state whom you represent.	10:22:10
15	MR. RAMSEY: This is Gabe	10:22:12
16	Ramsey with Orrick, Herrington & Sutcliffe	10:22:12
17	for Audible Magic and its customers.	10:22:13
18	THE VIDEOGRAPHER: And on the	10:22:22
19	phone?	10:22:23
20	MR. ANDERSON: This is Kirk	10:22:23
21	Anderson with Garteiser Honea for the	10:22:24
22	plaintiff, Blue Spike.	10:22:27
23	THE VIDEOGRAPHER: Okay.	10:22:29
24	Thank you.	10:22:29

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1 And would our court reporter, 10:22:30

2 Jill Ruggieri, of Merrill please swear in the 10:22:32

3 witness. 10:22:35

4 10:22:35

5 PETER CASSIDY, a witness 10:22:46

6 having been duly sworn, on oath deposes and 10:22:46

7 says as follows: 10:22:46

8 10:22:46

9 EXAMINATION 10:22:46

10 BY MR. RAMSEY: 10:22:46

11 Q Great. 10:22:47

12 Thanks for being here today, 10:22:49

13 Mr. Cassidy. The way this is going to go 10:22:50

14 on -- 10:22:52

15 Have you ever had your 10:22:53

16 deposition taken before or no? 10:22:53

17 A No. 10:22:54

18 Q Okay. 10:22:54

19 It's -- I'll just ask 10:22:55

20 questions. It's like a conversation. So 10:22:57

21 give us as detailed and truthful answers as 10:23:00

22 you can. 10:23:04

23 The most important thing is, 10:23:04

24 we try not to talk over each other. In 10:23:05



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1 other -- in normal conversation, folks tend 10:23:07

2 to step on each other. 10:23:10

3 A Q/A. 10:23:11

4 Q Yes, for her benefit so that she 10:23:13

5 can clearly~-- 10:23:15

6 A No, I've read transcripts, lots and 10:23:16

7 lots of transcripts. 10:23:18

8 Q Okay. Got you. 10:23:18

9 A Lots of transcripts. 10:23:18

10 MR. RAMSEY: And, Kirk, I 10:23:18

11 presume you'll want to designate this 10:23:19

12 transcript confidential, attorneys' eyes 10:23:22

13 only, since it will be about Blue Spike's 10:23:24

14 history and information; is that right? 10:23:27

15 MR. ANDERSON: Yes. 10:23:29

16 MR. RAMSEY: Okay. If you can 10:23:30

17 just -- confidential, attorneys' eyes only. 10:23:31

18 All right. 10:23:33

19 BY MR. RAMSEY: 10:23:33

20 Q So, Mr. Cassidy, when did you first 10:23:34

21 start working with Blue Spike? 10:23:36

22 A You know, I really don't remember. 10:23:40

23 The late 1990s, early knots, early 1999, 2000 10:23:43

24 or so. 10:23:46

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1	At the time, I was a	10:23:47
2	journalist covering security, cryptographic	10:23:48
3	technologies, security -- information	10:23:52
4	security technologies, and I was the manager	10:23:55
5	of something called the Digital Commerce	10:23:57
6	Society of Boston, which was a recent --	10:24:01
7	which was a discussion group amongst experts	10:24:03
8	in the field of information technology and	10:24:06
9	the nascent world of alternative payment	10:24:13
10	systems, like digital bearer certificates and	10:24:16
11	stuff like that.	10:24:20
12	So in the middle of that	10:24:20
13	conversation, I either interviewed	10:24:21
14	Mr. Moskowitz or bumped into a story about	10:24:23
15	him, but we somehow had a conversation, which	10:24:27
16	ended with me going to work for him as a	10:24:29
17	consultant as he began to develop the story	10:24:32
18	of his company, Blue Spike, to animate the	10:24:35
19	patents he was developing at the time and had	10:24:40
20	already established in previous iterations.	10:24:42
21	Q Okay.	10:24:46
22	MR. RAMSEY: I'm going to mark	10:24:47
23	a first exhibit.	10:24:48
24	Kirk, do you remember what	10:24:54

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1	exhibit umber we're up to -- and I'll give you	10:24:55
2	the Bates in a moment -- off hand? We're in the	10:24:57
3	50s.	10:25:00
4	MR. ANDERSON: I honestly	10:25:01
5	don't know.	10:25:01
6	MR. RAMSEY: Why don't we just	10:25:02
7	mark as it 50. Just -- that should be safe.	10:25:03
8	And, Kirk, this is BLU0142561.	10:25:06
9	(Exhibit 50 marked for	10:25:12
10	identification.)	10:25:12
11	BY MR. RAMSEY:	10:25:41
12	Q All right.	10:25:42
13	Mr. Cassidy, you've been	10:25:42
14	handed a document marked Exhibit 50. It's	10:25:43
15	marked BLU0142561.	10:25:45
16	It's labeled Consulting	10:25:48
17	Agreement.	10:25:50
18	A Good.	10:25:50
19	Q Do you recognize this? Take a	10:25:51
20	quick look.	10:25:54
21	A I am glad you got this, because I	10:25:55
22	need to read this with an attorney to figure	10:25:57
23	out what my obligations are to the Blue Spike	10:25:58
24	thing.	10:26:03

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1	Q	Sure.	10:26:03
2	A	Oh, gosh.	10:26:04
3		(Deponent read document.)	10:26:09
4	A	When was this dated? It's May	10:26:22
5		2000. That's about right.	10:26:25
6	Q	So -- so is this the first	10:26:26
7		consulting agreement -- this Exhibit 50 the	10:26:29
8		first consulting agreement you entered into	10:26:31
9		with Blue Spike?	10:26:33
10	A	It's the only one.	10:26:35
11	Q	Okay.	10:26:36
12	A	They ran out of money.	10:26:36
13	Q	Okay.	10:26:37
14		So were you working with Blue	10:26:38
15		Spike before you entered into this agreement	10:26:39
16		or is this --	10:26:41
17	A	No. I have a feeling I interviewed	10:26:42
18		him about steg. Steganography, sorry.	10:26:44
19	Q	All right.	10:26:48
20		So when you -- when you first	10:26:48
21		were engaged with Audible Magic -- sorry.	10:26:50
22		When you were first engaged	10:26:53
23		with Blue Spike in May of 2000, what was your	10:26:55
24		role at Blue Spike?	10:26:57

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1 What was your job? What were 10:26:59

2 your responsibilities? 10:27:01

3 A I was sort of communications 10:27:03

4 officer for what was the early company. I 10:27:04

5 helped them pull together the story, the 10:27:10

6 narrative of what the company was about, what 10:27:13

7 its innovations were, and a lot to, like, 10:27:15

8 listen to Scott, talk to him about it, just 10:27:17

9 fluidly sometimes about what they had for 10:27:20

10 intellectual property, what they had for 10:27:22

11 product ideas, what there were in terms of 10:27:23

12 opportunities in the market space and places 10:27:26

13 they could map that. 10:27:28

14 So I was sort of 10:27:29

15 communications officer and sound import, to a 10:27:31

16 certain extent, because I had had so much 10:27:33

17 experience with so many security 10:27:35

18 technologies. 10:27:37

19 It was good -- Scott just 10:27:38

20 liked just yawing with me on phone, talking 10:27:39

21 about the stuff, looking for places where his 10:27:41

22 stuff would fit, testing ideas, that kind of 10:27:43

23 thing. 10:27:46

24 Q Okay. 10:27:46

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1 And the time that you got 10:27:46  
2 involved with Blue Spike in May 2000, what 10:27:47  
3 was the principal technology offering that 10:27:50  
4 Blue Spike had? 10:27:53

5 A Something called Giovanni, which 10:27:54  
6 was a steganographically based technology to 10:27:57  
7 embed discrete and retrievable encrypted data 10:28:02  
8 into audible signals, audio signals, media 10:28:05  
9 signals of all types. 10:28:10

10 My fascination with it was at 10:28:12  
11 what point does this become a bar code and 10:28:14  
12 does that bar code actually enable a 10:28:17  
13 completely new market space that is being 10:28:19  
14 denied to it at the moment. 10:28:22

15 So I kind of had a native 10:28:24  
16 interest in seeing that part of it being 10:28:26  
17 developed, as well as just steg's cool. It's 10:28:28  
18 interesting. 10:28:33

19 Q And is the technology that you just 10:28:33  
20 described also known as digital watermarking? 10:28:35

21 A Yes, it can be. Yes, yes, exactly, 10:28:38  
22 yes. 10:28:40

23 Q Okay. 10:28:40

24 A For the press, yes. 10:28:41

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1	Q	So this is a topic I want to --	10:28:46
2		we'll probably talk about a lot today, but	10:28:48
3		I'm trying to understand at the time that you	10:28:49
4		first got involved with Blue Spike, how --	10:28:51
5		what was the plan for how digital	10:28:56
6		watermarking was going to compete with other	10:28:58
7		things, particularly digital fingerprinting,	10:29:00
8		as --	10:29:02
9	A	Can I ask a question?	10:29:03
10	Q	Yes.	10:29:04
11	A	What's the difference between	10:29:05
12		digital watermarking and digital	10:29:06
13		fingerprinting in your convention?	10:29:08
14	Q	Well, so by digital fingerprinting,	10:29:11
15		I mean creating a representation of content	10:29:13
16		based on content itself versus embedding	10:29:16
17		data.	10:29:19
18	A	Oh, right, right, right.	10:29:20
19		And which one of these would	10:29:22
20		you call "quantization"?	10:29:23
21	Q	I don't know what that means.	10:29:27
22		What do you mean by	10:29:28
23		"quantization"?	10:29:29
24	A	Reduction of an analogue signal	10:29:29

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1 into a digitally encoded representation of 10:29:32

2 that signal. 10:29:35

3 Q Well, I think -- so reducing a 10:29:37

4 signal to a discrete representation of it 10:29:40

5 without embedding information is what I mean 10:29:45

6 by digital fingerprinting. 10:29:47

7 Does that make sense? 10:29:50

8 A Yes, yes. It's -- yes, it's 10:29:51

9 getting a profile that abstracts. Yes, sort 10:29:53

10 of like a hash for or backpack function for a 10:29:57

11 signal, yes, okay. 10:30:02

12 Q So my question is, how -- what was 10:30:04

13 Blue Spike's plan to compete with companies 10:30:07

14 that were offering this kind of digital 10:30:10

15 fingerprinting technology? 10:30:13

16 A The focus at the time, I have to 10:30:14

17 tell you, was very intense about the 10:30:16

18 trials that the -- was it the RIAA was 10:30:20

19 holding, to see which digital watermarking 10:30:24

20 technique would be used for its convention on 10:30:28

21 digital watermarking. 10:30:33

22 And at the time I worked for 10:30:37

23 them, everything was about that, because it 10:30:38

24 was a moment where Scott thought he could 10:30:40



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1 prove the efficacy of the Giovanni technology 10:30:42  
2 as being superior in terms of the fidelity 10:30:46  
3 that it offered. 10:30:51

4 I remember that was a big part 10:30:51  
5 of the conversation. And he was, what's the 10:30:54  
6 word, determined to prove that digital 10:31:00  
7 watermarking could be executed without 10:31:02  
8 disturbing the fidelity of a signal. 10:31:05

9 Discussions of the difference 10:31:09  
10 between watermarking and fingerprinting, it 10:31:12  
11 didn't really come up a lot, you know, the 10:31:15  
12 way that came up, fidelity. 10:31:17

13 Q Yes. 10:31:19

14 A And utility. 10:31:20

15 Q Did Scott think that digital 10:31:20  
16 watermarking was a better solution to, for 10:31:24  
17 example, identifying content than 10:31:28  
18 fingerprinting, to your knowledge? 10:31:30

19 MR. ANDERSON: Object to form. 10:31:35

20 A You know, I can't tell what he 10:31:36  
21 thinks. 10:31:38

22 Q Yes. 10:31:38

23 A But I can tell -- I can tell he 10:31:39  
24 thought the watermark gave discrete 10:31:43

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1 association with an agent that had some 10:31:45  
2 rights or some interest in the object. He 10:31:48  
3 liked that. 10:31:51

4 He told a story about just 10:31:52  
5 being a grade school kid and marking a ruler 10:31:54  
6 on the edge where you couldn't see it just 10:31:58  
7 with his initials very quietly, and a girl in 10:32:00  
8 the class -- this is third grade, Miami Beach 10:32:04  
9 or something like that -- told him this guy's 10:32:07  
10 got your ruler, if I remember the story 10:32:09  
11 right, it's on the website. And he was able 10:32:12  
12 to scout that out and figure it out. 10:32:15

13 So there was something 10:32:17  
14 natively fascinating to him to be able to 10:32:18  
15 secretly mark something and associate it with 10:32:23  
16 a personality or an agent. 10:32:27

17 So I think the watermarking 10:32:28  
18 thing was definitely a big part of the story. 10:32:29

19 Q How and when did fingerprinting 10:32:33  
20 become a part of the conversation, to your 10:32:34  
21 recollection? 10:32:36

22 A The fingerprinting thing was 10:32:38  
23 technically just part of the overall process, 10:32:40  
24 but fingerprinting per se didn't discretely 10:32:42

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1	come up all the time.	10:32:45
2	It was just assumed that you	10:32:46
3	would have to make an abstraction of the	10:32:48
4	signal to put something into it. That's why	10:32:50
5	I asked about quantization earlier, because	10:32:53
6	the way it happens is, you know, the analogue	10:32:55
7	signal is the analogue signal, the tape or	10:32:57
8	the live performance.	10:33:00
9	And what happens it to that	10:33:00
10	signal is it's -- a program, you know,	10:33:03
11	receives that signal and makes decisions on	10:33:08
12	how to break it up into ones and zeros. And	10:33:11
13	that decision profile is something that can	10:33:14
14	be manipulated to the effect of introducing	10:33:17
15	novel information that can be later retrieved	10:33:22
16	as a human readable and perceivable and	10:33:28
17	interpretable dataset that can be used for	10:33:30
18	different things.	10:33:35
19	So the abstraction, the	10:33:36
20	profiling, the fingerprinting was just	10:33:38
21	considered part of the overall process. As	10:33:42
22	an end state, no, that was the beginning of a	10:33:45
23	larger process of associating a signal with	10:33:47
24	an agency, with a person, with convention of	10:33:51

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1	some sort, whatever you want to do, with	10:33:56
2	payment mechanism, sometimes came up.	10:34:00
3	Q Do you remember a company called	10:34:02
4	Digitale Hanse, H-A-N-S-E? Does this ring a	10:34:03
5	bell?	10:34:07
6	A No, really.	10:34:08
7	I mean, I've read history of	10:34:11
8	the Hanseatic League, but Digitale Hanse, no.	10:34:13
9	Q So you don't remember Andreas	10:34:19
10	Sappelt, S-A-P-P-E-L-T?	10:34:20
11	A No.	10:34:23
12	Q Okay.	10:34:23
13	MR. RAMSEY: Let's mark this	10:34:24
14	as Exhibit 51. Actually, you know what,	10:34:25
15	let's skip that for the moment.	10:34:28
16	Q Well, do you -- so I am going to	10:34:32
17	ask you -- we'll come to documents. There's	10:34:34
18	documents about all of this, but I just want	10:34:35
19	to ask you --	10:34:37
20	A Yes, sir.	10:34:38
21	Q -- do you remember a company called	10:34:39
22	Tuneprint?	10:34:40
23	A No.	10:34:41
24	Q No, okay.	10:34:41

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1	Do you remember a company	10:34:42
2	called RCS?	10:34:43
3	A RCS?	10:34:44
4	Q Uh-huh.	10:34:45
5	A No.	10:34:46
6	Q Okay.	10:34:46
7	A company called Cantometrics?	10:34:49
8	A No.	10:34:52
9	Q Okay, all right.	10:34:52
10	We'll -- we'll go to documents	10:34:53
11	later, but I was just curious if you remember	10:34:55
12	any of these. These were all fingerprinting	10:34:58
13	companies at the time.	10:34:59
14	I'm trying to -- I'm trying to	10:35:00
15	understand how fingerprint companies other	10:35:01
16	than Blue Spike fit into the picture at the	10:35:04
17	time.	10:35:06
18	Do you have any recollection	10:35:09
19	of talking about any of those companies?	10:35:10
20	A No.	10:35:13
21	The companies we talked about	10:35:13
22	are the ones that were involved in the -- I	10:35:15
23	think they were the RIAA trials, audibility	10:35:17
24	trials for watermarking technology.	10:35:20

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1 Q Is that -- are you talking about 10:35:23

2 SDMI? Is that the standard process? 10:35:26

3 A Yes, right. 10:35:29

4 Q So what was Blue Spike's 10:35:29

5 involvement in SDMI? 10:35:31

6 A They were a proponent of their own 10:35:34

7 Giovanni technology, and they entered into 10:35:37

8 the field tests, and I think they won the 10:35:41

9 audibility, the fidelity test. 10:35:45

10 It was, you know, a big day 10:35:48

11 for Scott, because he had proved you can do 10:35:49

12 useful things without signals without 10:35:52

13 disturbing their fidelity. 10:35:54

14 Q What -- what ultimately happened 10:35:57

15 with SDMI? 10:35:58

16 A They took -- they did their tests 10:36:00

17 and nothing really came of it. 10:36:02

18 Q So did -- in your view, did that 10:36:06

19 standard setting attempt succeed or not 10:36:11

20 succeed? 10:36:13

21 A It succeeded to the extent that it 10:36:14

22 proved that you can have useful watermarking 10:36:16

23 technologies without destroying its fidelity. 10:36:20

24 I mean, for some engineers, it 10:36:24

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1 really doesn't matter that much. But it 10:36:25  
2 brought out the ideas -- many useful ideas in 10:36:27  
3 the public domain and in the trade press. 10:36:31  
4 And that, it's useful to have a conversation 10:36:33  
5 about that stuff. 10:36:36  
6 In terms of doing what it 10:36:37  
7 should have done, which is animate a market 10:36:39  
8 that was allowed to lie foul to the extent 10:36:40  
9 where people were stealing rather than 10:36:43  
10 enjoying opportunities to buy, I think it 10:36:45  
11 really didn't do anything at all. 10:36:47  
12 But they weren't prepared to 10:36:49  
13 fail constructively because they didn't have 10:36:51  
14 a zealous innovator or innovators. 10:36:54  
15 They had a group of -- it was 10:36:57  
16 trade associations. They're not places for 10:36:58  
17 innovation. At best, they're places for 10:37:01  
18 standards adoption. They needed another 10:37:02  
19 piece. The other piece they needed was 10:37:06  
20 payment mechanisms. 10:37:08  
21 That's my opinion. 10:37:09  
22 Q Okay. 10:37:10  
23 A That in the room, things might have 10:37:11  
24 changed, but it didn't really go anywhere. 10:37:12

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1 Q So do you recall a point at which 10:37:14  
2 the SDMI standard-setting process basically 10:37:16  
3 did not continue? 10:37:22

4 A As far as I know, it really ended 10:37:25  
5 inconclusively. But I don't know; I didn't 10:37:28  
6 follow up on it. 10:37:30

7 You know, when Blue Spike ran 10:37:31  
8 out of money, you know, it was interesting. 10:37:32  
9 You know, there were some standards I 10:37:36  
10 followed, but there was, like, internet 10:37:37  
11 technologies IETF, IEEE. But the SDMI thing, 10:37:39  
12 I don't know if they even kept an 10:37:45  
13 organization after. 10:37:46

14 Did they? I don't know. 10:37:48

15 Q When do you recall Blue Spike ran 10:37:50  
16 out of money? Was that 2001, approximately? 10:37:51

17 A It was pretty -- yes, like I 10:37:55  
18 didn't -- it was under a year I was helping 10:37:56  
19 them out; and then it was sort of like, well, 10:37:59  
20 we're closing up or we're looking for new 10:38:01  
21 money, whatever. 10:38:04

22 Q Yes. 10:38:04

23 And I presume no new money was 10:38:05

24 raised at that time and -- 10:38:07



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1	A I don't know. Occasionally I would	10:38:10
2	see little announcements he had a new patent,	10:38:12
3	so I didn't know if they had gotten new money	10:38:15
4	and were continuing on development of the	10:38:18
5	technology or they were just, you know,	10:38:20
6	building the patent estate for later	10:38:24
7	development.	10:38:25

8	I had no idea. I didn't	10:38:26
9	really investigate it too far.	10:38:27

10	Q	All right.	10:38:40
----	---	------------	----------

11	MR. RAMSEY: Can we please	10:38:41
12	mark Exhibit 51.	10:38:42

13	(Exhibit 51 marked for	10:38:43
14	identification.)	10:38:43

15	BY MR. RAMSEY:	10:38:56
----	----------------	----------

16	Q	All right.	10:38:57
----	---	------------	----------

17	You've been handed a document	10:38:58
18	marked Exhibit 51. It's labeled BLU0118735.	10:38:59

19	This is an email on June 14,	10:39:05
20	2000, from Scott Moskowitz to several people,	10:39:07
21	including yourself, and is also to somebody	10:39:10
22	named Andreas Sappelt.	10:39:17

23	Could you take a look at the	10:39:20
24	email for a second and let me know if you	10:39:21

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1 remember what was being discussed here? 10:39:23

2 A Really, it's a note saying I'm 10:39:28

3 traveling, you know what I mean? It's not 10:39:28

4 saying I named the baby after you. You know 10:39:29

5 what I mean? 10:39:32

6 Q Right. 10:39:33

7 So it suggests to me -- this 10:39:34

8 Exhibit 51 suggests that there is some 10:39:35

9 arrangement being contemplated by Blue Spike 10:39:39

10 and Andreas Sappelt. 10:39:44

11 Do you recall what that was? 10:39:48

12 A No. If I knew the story, I would 10:39:49

13 help you out, but I don't remember the story 10:39:51

14 that goes with this. Sappelt -- 10:39:53

15 Q Name just doesn't -- you just don't 10:39:56

16 remember the name? 10:39:58

17 A Really. Swear to God. 10:39:59

18 Q Okay. 10:40:00

19 A Okay. 10:40:01

20 Q So when you -- so what kinds of 10:40:10

21 things did you help Blue Spike do when you 10:40:13

22 were hired? 10:40:15

23 So give me examples of the 10:40:15

24 type of things -- 10:40:17

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1	A	Write business plans to a certain	10:40:18
---	---	-----------------------------------	----------

2 extent. Write corporate profiles for 10:40:19

```
3 investors, update them. 10:40:22
```

4 He need a website that would 10:40:26

5 just talk about the technology plainly, 10:40:27

6 because, you know, he liked to take it out. 10:40:29

7 He liked to take it way out, because he was 10:40:32

```
8      used to doing that for -- organizing his
```

9 patents, you know? 10:40:38

10 So he just needed help with 10:40:39

11 that. So basic business planning, basic 10:40:40

12	business plan authoring, basic organization	10:40:43
----	---	----------

13 of the website, occasional press releases, 10:40:45

14 stuff like that, communication stuff, and 10:40:47

15 unless, you know, a riff on ideas for the 10:40:49

16 technology. 10:40:52

17	Q	Okay.	10:40:53
----	---	-------	----------

18	Did you ever work on pitches	10:40:55
----	------------------------------	----------

19 or presentations to potential customers? 10:40:56

20	A	No, because the focus was the SDMI	10:41:01
----	---	------------------------------------	----------

21 at that time. 10:41:04

22	Q	Okay.	10:41:04
----	---	-------	----------

23	In the summer of 2000, do you	10:41:06
----	-------------------------------	----------

24	recall Blue Spike making a proposal to Warner	10:41:08
----	---	----------

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1 Music regarding its watermarking product? 10:41:12

2 A I think there was something going 10:41:18

3 on with Warner. That's a long time ago. 10:41:19

4 It's getting on 15 years. 10:41:22

5 Q Yes. 10:41:25

6 Do you remember anything about 10:41:25

7 that? 10:41:26

8 A I think I remember something was 10:41:26

9 going on, but I don't remember the details of 10:41:27

10 it. 10:41:29

11 Q Okay. 10:41:29

12 A Yes. 10:41:30

13 Q Well, so tell me what you do 10:41:31

14 remember about your work on Blue Spike's 10:41:34

15 business plan. 10:41:37

16 A I remember Scott had lots of ideas. 10:41:40

17 I had to organize them into -- he wanted 10:41:43

18 something different. He wanted a corporate 10:41:47

19 profile, so I kind of gave him that. 10:41:49

20 It had some parts of just a 10:41:53

21 normal business plan, as I remember, but it 10:41:55

22 was really modeling the -- what the company, 10:41:56

23 you know, is setting out to do rather than a 10:42:01

24 step-by-step, you know, 10:42:04

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1	achievement-by-achievement, securing the	10:42:06
2	market space type of, what's it called,	10:42:09
3	business plan.	10:42:12
4	He I think he must have had	10:42:20
5	copies of that stuff. They might be marked	10:42:22
6	corporate profile, corporate profile summary.	10:42:24
7	Q Okay. All right.	10:42:27
8	MR. RAMSEY: If we could	10:42:28
9	please mark Exhibit 52.	10:42:29
10	(Exhibit 52 marked for	10:38:43
11	identification.)	10:38:43
12	BY MR. RAMSEY:	10:42:30
13	Q All right.	10:42:49
14	You've been handed Exhibit 52	10:42:49
15	labeled BLU0205987. The cover states Blue	10:42:52
16	Spike, Inc. Corporate Profile, August 2000.	10:42:58
17	Do you recognize this	10:43:01
18	document?	10:43:02
19	A Yes, I'm pretty sure I wrote this.	10:43:03
20	Q Okay.	10:43:04
21	So what was the purpose of	10:43:11
22	Exhibit 52?	10:43:12
23	A To track investors, to give them an	10:43:13
24	organized way to think about the opportunity,	10:43:15

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1 because all of it was a little new in 2000, 10:43:17

2 unless you were a steg craftsman. 10:43:21

3 Q So -- so this would have been 10:43:25

4 provided to some -- a potential investor to 10:43:26

5 help them determine -- 10:43:29

6 A Yes, seed invention. 10:43:30

7 Q What kind of investment activity 10:43:32

8 was going on that you recall in the summer of 10:43:33

9 2000? 10:43:36

10 A He was getting interest from, I 10:43:37

11 think, seed investors. The AROD [phonetic] 10:43:39

12 hadn't happened yet, and that was fine. 10:43:41

13 It looked like the plan was go 10:43:44

14 into SDMI, make the case for the technology, 10:43:46

15 prove its superiority, and then engage the 10:43:49

16 market space that would organize subsequent 10:43:53

17 to the establishment of standards of 10:43:55

18 watermarking through the SDMI process. 10:43:59

19 So he was, you know flowing 10:44:01

20 into that opportunity. 10:44:06

21 Q So is it fair to say that most of 10:44:08

22 the company's energies in the spring and 10:44:10

23 summer of 2000 were focused on SDMI or were 10:44:14

24 there other efforts? 10:44:18

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1 A It was focused on SDMI. We had 10:44:19

2 engineering out in Phoenix working all hours, 10:44:21

3 you know, testing, developing, redeveloping, 10:44:23

```
4 testing. 10:44:25
```

5 You know, Mike was -- was 10:44:26

6 working it hard. He had another guy. It was 10:44:28

7 him and another guy. It was a small lab, but 10:44:30

8 they were working it hard to -- to -- to make 10:44:32

9 the case. 10:44:35

10 You know, you can do all this. 10:44:36

11 You can put a lot of information in there, 10:44:38

12 and you don't have to destroy the fidelity of 10:44:39

```
13 the final object. 10:44:42
```

14 Q What do you mean, you can put a lot 10:44:42

15 of information in there? 10:44:44

16 What do you mean by that? 10:44:45

17 A You know, stop -- enough to 10:44:46

18 identify, you know, agency, owner, you know, 10:44:48

19 copyright, that of thing. 10:44:51

20 Q You mean -- when you say put a lot 10:44:54

21 of information in it, do you mean embed a lot 10:44:55

22 of information into a signal to identify it? 10:44:58

23 A Yes, useful stuff. Doesn't have to 10:45:00

24 be, like, a single-digit number. You can put 10:45:02

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1 stuff in there, you know.

10:45:05

2 Q You mentioned the name Mike.

10:45:07

3 Did you mean Mike Berry?

10:45:09

4 A Yes.

10:45:15

5 Q Mike Berry, B-E-R-R-Y.

10:45:15

6 A B-E-R-R-Y.

10:45:15

7 Q Do you recall any Blue Spike

10:45:19

8 customer interactions that you helped with

10:45:21

9 potential sales, for example?

10:45:24

10 A No, not at the time, no.

10:45:29

11 Development.

10:45:32

12 Q In the -- okay.

10:45:33

13 By the summer of 2000, was

10:45:34

14 there demo or any working version of the

10:45:35

15 watermarking product?

10:45:39

16 A Oh, yes, yes, because -- I don't

10:45:40

17 know about the time, but there was at the

10:45:43

18 time of the SDMI trials. It was beyond a

10:45:45

19 demo. It was actually functioning.

10:45:48

20 It was functioning for

10:45:51

21 embedding and demonstrating the technology.

10:45:53

22 Q Okay.

10:45:55

23 Describe for me what -- what

10:45:58

24 you recall about the watermarking demo

10:45:59



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1 product. 10:46:01

2 A I was never there. 10:46:02

3 Q Okay. 10:46:03

4 A I was never present during the -- 10:46:03

5 during that thing, but I read the reports 10:46:05

6 that came in from the labs that conducted 10:46:09

7 them for whatever group ran the SDMI. 10:46:11

8 Q Got it. Okay. 10:46:13

9 In Exhibit 52, if please turn 10:46:14  
10 to the page labeled BLU0205998. 10:46:18

11 A Okay. 10:46:26

12 Q On the -- on the page ending in 10:46:27  
13 998, there's a section called Technology 10:46:30  
14 Companies. 10:46:35

15 Do you see that? 10:46:36

16 A Yes. 10:46:37

17 Q Please read that section and just 10:46:37  
18 let me know when you've had a chance to -- to 10:46:38  
19 take a look. 10:46:42

20 (Deponent read document.) 10:46:43

21 A Oh, okay, there they are. 10:46:44

22 (Deponent read document.) 10:47:08

23 [REDACTED] [REDACTED] [REDACTED]  
[REDACTED] [REDACTED] [REDACTED] :10

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■ [REDACTED] [REDACTED]  
■ [REDACTED] [REDACTED]  
■ [REDACTED] [REDACTED]  
■ [REDACTED] 10:47:19

5 Q Yes. 10:47:19

6 Well, so the page ending in 10:47:20

7 998 in Exhibit 52, and I'll just read it for 10:47:21

8 the record, states [REDACTED] [REDACTED]

■ [REDACTED] [REDACTED]

■ [REDACTED] [REDACTED]

■ [REDACTED] [REDACTED]

■ [REDACTED] [REDACTED]

■ [REDACTED] [REDACTED]

■ [REDACTED] [REDACTED]

15 A Mm-hmm. 10:47:46

16 Q Does this help you remember 10:47:47

17 anything about what Blue Spike was doing with 10:47:48

18 Digitale Hanse? 10:47:50

19 A Not really. I got to tell you, it 10:47:52

20 was a long time ago. And it might have come 10:47:55

21 from Scott, you know, in an email. Please 10:47:57

22 include this, you know? 10:47:58

23 Q I see. 10:47:59

24 Well, it's my impression in 10:48:00

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1	[REDACTED]	[REDACTED]
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16	[REDACTED]	[REDACTED]
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23	[REDACTED]	[REDACTED]
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Q Sure.

Q Okay.

A I wasn't witness to those, you

know? These -- this stuff was probably --

was -- since I can't remember ever meeting

those people --

I remember people more than

stuff.

Q Yes.

A And people stories more than stuff.

This was probably provided by -- by Scott in

either an interview or --

:59

10:49:16

10:49:17

10:49:29

10:49:29

10:49:31

10:49:33

10:49:37

10:49:39

10:49:40

10:49:41

10:49:42

10:49:43

10:49:46

10:49:49

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1 Q Okay.

10:49:51

2 So in general when you -- how

10:50:01

3 did you go about the process of creating

10:50:04

4 Exhibit 52, Blue Spike's corporate profile?

10:50:06

5 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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10:50:30

14 [REDACTED]

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10:51:08

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[REDACTED]	[REDACTED]	10:51:54

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Horizontal Bar Chart

Category	Value
1	10
2	5
3	15
4	10
5	10
6	10
7	10
8	10
9	10
10	10
11	10
12	10
13	10
14	10
15	10
16	10
17	10
18	10
19	10
20	10

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1 So, you know, he was --

10:53:16

2 Q [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]:22

6 please.

10:53:24

7 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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10:53:43

16 [REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

10:53:59



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1 know?

10:54:01

2

■

■

■

■

■

■

■

■

54:20

11

MR. RAMSEY: I'm going to

10:54:23

12

mark, please, Exhibit 53, I think is where we

10:54:23

13

are.

10:54:28

14

(Exhibit 53 marked for

10:54:29

15

identification.)

10:54:29

16

BY MR. RAMSEY:

10:54:46

17

Q All right.

10:54:47

18

You've been handed a document

10:54:47

19

labeled Exhibit 53. It's an August 23, 2000

10:54:49

20

email from Gregg Moskowitz to Scott

10:54:52

21

Moskowitz, Mike Berry and yourself.

10:54:55

22

Can you take a moment and just

10:54:57

23

review -- review the document and let me know

10:54:58

24

if you recognize it.

10:55:00

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1 (Deponent read document.) 10:55:01

2 MR. ANDERSON: Gabe, could you 10:55:04

3 give me the Bates number on that as well? 10:55:04

4 MR. RAMSEY: It's 10:55:06

5 BERRY00012976. 10:55:06

6 MR. ANDERSON: Thank you. 10:55:20

7 (Deponent read document.) 10:55:21

8 BY MR. RAMSEY: 10:55:21

9 [REDACTED] [REDACTED]

10 [REDACTED] 10:55:24

11 [REDACTED] [REDACTED]

12 [REDACTED] [REDACTED]

13 [REDACTED] [REDACTED]

14 [REDACTED] [REDACTED]

15 [REDACTED] [REDACTED]

16 [REDACTED] [REDACTED]

17 [REDACTED] 10:55:41

18 [REDACTED] [REDACTED]

19 [REDACTED] [REDACTED]

20 [REDACTED] [REDACTED]

21 [REDACTED] [REDACTED]

22 [REDACTED] [REDACTED]

23 [REDACTED] [REDACTED]

24 [REDACTED] 10:55:55

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1	[REDACTED]	[REDACTED]
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4	[REDACTED]	[REDACTED]
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[REDACTED]	[REDACTED]	10:56:48



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1 competitive reality, I suppose? 10:57:51

2 A I don't remember it being talked 10:57:54

3 about, per se. Whatever I talked about was 10:57:55

4 competitors for the SDMI, and I don't 10:58:00

5 remember their names, but I do remember Scott 10:58:02

6 would comment on some aspects of them, you 10:58:04

7 know. 10:58:07

8 And again, the thing I do 10:58:07

9 remember is the emphasis on fidelity. But I 10:58:09

10 do remember the emphasis, even discussion of 10:58:15

11 competitors, was about fidelity. 10:58:16

12 Q Who were competitors in the 10:58:19

13 watermarking space that you recall? 10:58:21

14 A I don't remember. I mean, it's 10:58:23

15 like the [REDACTED]. I typed it at one 10:58:24

16 point, but -- 10:58:26

17 Q Right, okay. 10:58:27

18 I'm going to ask you about the 10:58:31

19 folks listed on Exhibit 53. 10:58:32

20 [REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED] 10:58:44

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1	[REDACTED]	[REDACTED]
2	[REDACTED]	[REDACTED]
3	[REDACTED]	[REDACTED]
4	[REDACTED]	[REDACTED]
5	[REDACTED]	[REDACTED]
6	[REDACTED]	[REDACTED]
7	[REDACTED]	[REDACTED]
8	[REDACTED]	[REDACTED]
9	[REDACTED]	[REDACTED] 00:01
10	[REDACTED]	[REDACTED]
11	[REDACTED]	[REDACTED]
12	[REDACTED]	[REDACTED]
13	Q Yes, okay.	11:00:04
14	Do you remember how you met	11:00:24
15	Scott Moskowitz? Did you interview with him	11:00:25
16	or --	11:00:27
17	A Yes.	11:00:29
18	Q Did you approach them, Blue Spike?	11:00:29
19	A I forget how I met him, but I went	11:00:31
20	down to Miami to talk him about the stuff.	11:00:34
21	Went to Joe's Stone Crab, all that stuff.	11:00:38
22	Q And so -- but I mean, do you	11:00:41
23	remember -- did you respond to, like, a job	11:00:42
24	posting or was it --	11:00:45

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1           A     No, we just started talking. I've  
2     never done -- responded to a job posting  
3     thing.

4 Q You just met him by conference or  
5 something maybe?

6           A       Something like that. Or  
7       interviewed him about steg.

8 Q Okay.

9                    A        Steganography.

10 Q What's is steganography?

11           A     It's -- it's the embedding of  
12     information in a hidden way into other  
13     information or object.

14 [REDACTED]

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

19                    A                    [REDACTED]

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



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1	A	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	11:02:07
9	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	11:02:29
15	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED] data	11:02:47
22	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	11:02:56

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1	A	That I don't know. That part I	11:02:59
2		don't know. Sorry.	11:03:01
3		MR. RAMSEY: If we could	11:03:02
4		please mark Exhibit 54.	11:03:03
5		(Exhibit 54 marked for	11:03:04
6		identification.)	11:03:04
7		BY MR. RAMSEY:	11:03:21
8	Q	All right.	11:03:21
9		You've been handed Exhibit 54,	11:03:22
10		which is labeled BERRY00012980.	11:03:24
11		This is an August 23, 2000	11:03:31
12		email from Scott Moskowitz to you, Mike Berry	11:03:34
13		and Gregg Moskowitz, again, about [REDACTED].	11:03:36
14		And I'll read for the	11:03:39
15		record -- Scott Moskowitz states regarding	11:03:42
16		Image Lock, "It looks like they are talking	11:03:44
17		about fingerprints the same way we do in a	11:03:46
18		patent application we are to file this week..	11:03:49
19		a signal abstract."	11:03:54
20	A	Yes.	11:03:58
21	Q	Do you remember anything about	11:03:58
22		Scott's signal abstract patent application?	11:04:00
23		No?	11:04:03
24	A	No, I didn't get that inside	11:04:03

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1 baseball on the patents. 11:04:05

2 Q Okay. 11:04:06

3 A It was my job to interpret the 11:04:06

4 stuff for investors. 11:04:08

5 Q So do you recall any conversations 11:04:10

6 about this -- this word "signal abstract"? 11:04:11

7 A Really, no. We knew the 11:04:18

8 difference. I mean, I knew the difference. 11:04:19

9 That's why he hired me. 11:04:20

10 [REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED] 11:04:41

19 Q To the best of your recollection, 11:04:41

20 why was everybody talking in this email about 11:04:44

21 [REDACTED]? 11:04:46

22 What was the purpose of that? 11:04:48

23 A I don't know. I really -- the 11:04:52

24 context and the assumptions of the 11:05:02

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1	conversation I don't have now.	11:05:04
2	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	11:05:16
6	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	11:05:31
12	A [REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	11:05:48
19	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	11:06:02
[REDACTED]	[REDACTED]	

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1	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	11:06:14
6	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	11:06:42
16	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	11:07:06



15



24

11:07:41

██████████:01

11:08:02



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1

[REDACTED]

[REDACTED]

2

[REDACTED]

11:09:15

3

[REDACTED]

[REDACTED]

4

[REDACTED]

[REDACTED]

5

[REDACTED]

[REDACTED]

6

[REDACTED]

[REDACTED]

7

[REDACTED]

[REDACTED]

8

[REDACTED]

[REDACTED]

9

[REDACTED]

[REDACTED]

10

[REDACTED]

[REDACTED]

11

[REDACTED]

[REDACTED]

12

[REDACTED]

11:09:39

13

[REDACTED]

[REDACTED]

14

[REDACTED]

[REDACTED]

15

[REDACTED]

[REDACTED]

16

[REDACTED]

[REDACTED]

17

[REDACTED]

[REDACTED]

18

[REDACTED]

[REDACTED]

19

[REDACTED]

[REDACTED]

20

[REDACTED]

[REDACTED]

21

[REDACTED]

[REDACTED]

22

[REDACTED] going about an

11:10:05

23

hour. Why don't we just take five minutes,

11:10:06

24

just to kind of give us a break every hour.

11:10:08



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1	A	Can I get a coffee?	11:10:10
2	Q	Yes. Let's just go off the record	11:10:12
3		a minute, grab a coffee, take five or ten --	11:10:13
4	A	Am I doing okay? Is this what you	11:10:18
5		need?	11:10:19
6	Q	Yes.	11:10:19
7	A	I just want to make sure everything	11:10:20
8		is taken care of.	11:10:21
9	Q	Yes.	11:10:22
10		THE VIDEOGRAPHER: It's	11:10:23
11		11:03 a.m. We're off the record end of Tape	11:10:23
12		No. 1.	11:10:29
13		(Recess.)	11:25:00
14		THE VIDEOGRAPHER: It is	11:25:51
15		11:19 a.m. We're back on the record on Tape	11:25:51
16		No. 1.	11:25:55
17		MR. RAMSEY: All right. If	11:25:56
18		you could please mark Exhibit 55.	11:25:56
19		(Exhibit 55 marked for	11:25:57
20		identification.)	11:25:57
21		BY MR. RAMSEY:	11:25:58
22	Q	All right.	11:26:16
23		You've been handed Exhibit 55	11:26:17
24		few which have is document labeled	11:26:20

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1 BERRY00012990. 11:26:21

2 This is an email from Scott 11:26:25

3 Moskowitz to a number of people, including 11:26:26

4 yourself, dated August 22, 2000. 11:26:27

5 Could you take just a minute 11:26:30

6 and just take a look at the document. 11:26:31

7 A Yes, sir. 11:26:34

8 Q And let me know when you've had a 11:26:35

9 chance to do that. 11:26:36

10 (Deponent read document.) 11:26:37

11 A Yes. 11:27:51

12 Q Okay. 11:27:52

13 So do you recognize Exhibit 55 11:27:52

14 as a kind of email communication about the 11:27:55

15 business of Blue Spike? Is that fair? 11:27:58

16 A Yes. 11:28:00

17 Q Okay. 11:28:00

18 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] 11:28:10

24 Q Okay. 11:28:11



11:29:02

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1

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

11:29:53

24

MR. ANDERSON: Object to form.

11:29:59

7	Q Did Blue Spike ever build a content	11:30:17
8	monitoring product, to your knowledge?	11:30:20

12	Q But in terms of your role of	11:30:32
13	generating business plans and such, do you	11:30:34
14	recall a Blue Spike monitoring product?	11:30:37

18 Q Okay. 11:30:46

\_\_\_\_\_

11:31:01

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1

[REDACTED]

[REDACTED]

2

[REDACTED]

[REDACTED]

3

[REDACTED]

[REDACTED]

4

[REDACTED]

11:31:11

5

MR. ANDERSON: Object to form.

11:31:14

6

[REDACTED]

[REDACTED]

7

[REDACTED]

[REDACTED]

8

[REDACTED]

[REDACTED]

9

[REDACTED]

[REDACTED]

10

[REDACTED]

11:31:37

11

[REDACTED]

[REDACTED]

12

[REDACTED]

[REDACTED]

13

[REDACTED]

[REDACTED]

14

[REDACTED]

11:31:51

15

[REDACTED]

[REDACTED]

16

[REDACTED]

[REDACTED]

17

[REDACTED]

[REDACTED]

18

[REDACTED]

[REDACTED]

19

[REDACTED]

[REDACTED]

20

[REDACTED]

[REDACTED]

21

[REDACTED]

[REDACTED]:17

22

And I can't call those

11:32:21

23

assumptions, you know, an animated

11:32:24

24

conversation about it. I mean, really most

11:32:27



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1	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
12	Q Okay.	11:34:00
13	Do you understand Exhibit 55	11:34:03
14	to be a discussion of -- about what is	11:34:04
15	[REDACTED]	11:34:05
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	11:34:37



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1	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	11:34:49
6	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	11:35:00
11	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	11:35:17
18	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	11:35:33

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1

2

3

4

Q Okay. All right.

5

MR. RAMSEY: If we could

6

please mark Exhibit 56.

7

(Exhibit 56 marked for

8

identification.)

9

BY MR. RAMSEY:

10

Q All right.

11

You've been landed a document

12

marked Exhibit 56. It is labeled BLU0376218.

13

It is an August 28, 2000 email from you to

14

Gregg Moskowitz, Scott Moskowitz and Mike

15

Berry.

16

Can you take a minute and

17

review Exhibit 56?

18

A Commander Taco.

19

(Deponent read document.)

20

A Yes.

21

Q All right.

22

So, first of all, is it your

23

understanding at that Exhibit 56 was kind of

24

an ordinary business communication of Blue



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1	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	11:38:00
6	Q Okay.	11:38:01
7	And do you believe that you	11:38:01
8	read about this company, Tuneprint, on	11:38:06
9	Slashdot in August 2000?	11:38:07
10	A Yes.	11:38:10
11	Q [REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	11:38:16
14	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	11:38:40

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1

[REDACTED]

[REDACTED]

2

[REDACTED]

[REDACTED]

3

[REDACTED]

[REDACTED]

4

[REDACTED]

[REDACTED]

5

[REDACTED]

[REDACTED]

6

[REDACTED]

[REDACTED]

7

[REDACTED]

[REDACTED]

8

[REDACTED]

11:39:05

9

[REDACTED]

[REDACTED]

10

[REDACTED]

[REDACTED]

11

[REDACTED]

[REDACTED]

12

[REDACTED]

[REDACTED]

13

[REDACTED]

[REDACTED]

14

[REDACTED]

[REDACTED]

15

[REDACTED]

[REDACTED]

16

[REDACTED]

[REDACTED]

17

[REDACTED]

[REDACTED]

18

[REDACTED]

[REDACTED]

19

[REDACTED]

[REDACTED]

20

This -- the fingerprinting was

11:39:30

21

sort of a more book entry style of

11:39:33

22

management. Blue Spike was more embedded

11:39:36

23

discrete information for retrieval style or

11:39:40

24

architectural approach.

11:39:44

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1 But we watched it all, you 11:39:45

2 know, because there were arguments to be made 11:39:47

3 for both, you know, architectural approaches. 11:39:48

4 Q [REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED] 11:40:34

21 [REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED] :43

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1

[REDACTED]

[REDACTED]

2

[REDACTED]

[REDACTED]

3

[REDACTED]

[REDACTED]

[REDACTED]

4

[REDACTED]

11:40:53

5

[REDACTED]

[REDACTED]

6

[REDACTED]

[REDACTED]

7

[REDACTED]

[REDACTED]

[REDACTED]

8

[REDACTED] remember anything about

11:41:02

9

this company Tuneprint in particular beyond

11:41:02

10

what's in Exhibit 56?

11:41:04

11

A

No, I mean, a clip, sent the email,

11:41:06

12

forget.

11:41:10

13

Q

So I asked you a while ago whether

11:41:17

14

Blue Spike had a content monitoring product.

11:41:18

15

Do you ever remember a Blue

11:41:21

16

Spike content fingerprinting technology of

11:41:23

17

the nature -- you know, like the Tuneprint

11:41:25

18

system?

11:41:28

19

A

Like that? No. Digital

11:41:32

20

watermarking is really what the company was

11:41:34

21

vested in in terms of its architectural

11:41:36

22

approach to management of intellectual

11:41:38

23

property objects like songs.

11:41:41

24

Q

Do you recall conversations about

11:41:45

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1

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

11:42:02

10

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

11:42:12

16

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

11:42:24

21

Q

Okay.

11:42:25

22

Do you remember any -- I mean,

11:42:25

23

first of all, do you remember this particular

11:42:29

24

email?

11:42:30



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1	Do you remember sending it now	11:42:31
2	that you see it?	11:42:32
3	A Not the discrete email per se; but	11:42:33
4	looking at it, yes, this is kind of the	11:42:36
5	typical stuff I would say. [REDACTED]	[REDACTED]
6	[REDACTED]	[REDACTED]
7	[REDACTED]	11:42:42
8	[REDACTED]	[REDACTED]
9	[REDACTED]	[REDACTED]
10	[REDACTED]	[REDACTED]
11	[REDACTED]	11:42:50
12	[REDACTED]	11:42:53
13	[REDACTED]	[REDACTED]
14	[REDACTED]	[REDACTED]
15	[REDACTED]	[REDACTED]
16	[REDACTED]	[REDACTED]
17	[REDACTED]	[REDACTED]
18	[REDACTED]	[REDACTED]
19	[REDACTED]	11:43:07
20	Q Yes, okay.	11:43:09
21	MR. RAMSEY: If we could	11:43:35
22	please mark Exhibit 57.	11:43:37
23	(Exhibit 57 marked for	11:43:38
24	identification.)	11:43:38

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1	BY MR. RAMSEY:	11:43:38
2	Q All right.	11:43:56
3	You've been handed Exhibit 57,	11:43:57
4	which is an email from Scott Moskowitz to you	11:43:58
5	on September 13, 2000, labeled BLU0131138.	11:44:00
6	If you could take a moment to	11:44:11
7	look at Exhibit 57 and let me know when	11:44:14
8	you've had a chance to do that.	11:44:17
9	(Deponent read document.)	11:44:32
10	A Yes.	11:46:39
11	Q So what's your understanding, just	11:46:39
12	having reviewed Exhibit 57, what was	11:46:41
13	happening in this email?	11:46:43
14	A I don't actually remember the exact	11:46:45
15	context. Okay.	11:46:47
16	(Deponent read document.)	11:46:59
17	A I really can't remember what	11:46:54
18	diagram they were talking about. You got to	11:47:00
19	remember, this was a long time ago.	11:47:02
20	Q It looks to me the bottom of the	11:47:06
21	first page of Exhibit 57, you're exchanging	11:47:07
22	emails with Scott Moskowitz about --	11:47:12
23	A Right.	11:47:14
24	Q -- how Disney might operate a,	11:47:14

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1 quote, Napster-like service.

11:47:19

2 Do you see that?

11:47:21

3 A Right.

11:47:22

4 Q Do you remember the work that you

11:47:23

5 were doing with Disney or for Disney at the

11:47:25

6 time?

11:47:27

7 A No.

11:47:27

8 Q Okay.

11:47:29

9 Then it appears to me that the

11:47:31

10 top of Exhibit 57, the first page, Scott

11:47:33

11 responds to your discussion of this

11:47:36

12 Napster-like service and says, and I quote,

11:47:39

13 "You can check out Tuneprint.com, for

11:47:42

14 instance, concerning how it would look. We

11:47:45

15 found a patent on monitoring of signals,

11:47:46

16 which is exactly like this."

11:47:48

17 Do you see that?

11:47:50

18 A Mm-hmm.

11:47:51

19 Q So first of all, is Tuneprint

11:47:52

20 referenced here the same Tuneprint, to your

11:47:57

21 understanding, that we mentioned in

11:48:00

22 Exhibit 56?

11:48:02

23 A Probably, yes.

11:48:03

24 Q What do you recall about how Blue

11:48:04

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1 Spike was thinking about Tuneprint-like 11:48:08

2 business models at this time? 11:48:12

3 A I can't really recall. I can't 11:48:19

4 really recall. 11:48:21

5 This looks like we were having 11:48:22

6 a discussion about some kind of presentation 11:48:24

7 materials probably to pitch to an investor or 11:48:26

8 possibly to pitch to a partner in terms of 11:48:30

9 the technology. 11:48:32

10 Q Mm-hmm. 11:48:38

11 A But the Disney reference I really 11:48:38

12 don't know. I can't recall now. I'm sorry. 11:48:40

13 Q Yes. No, it's okay. 11:48:42

14 I'm trying to understand, you 11:48:43

15 know, what in September 2000 Blue Spike was 11:48:47

16 doing with the signal abstract technology. 11:48:50

17 Do you have a recollection of 11:48:54

18 what Blue Spike was doing with its signal 11:48:54

19 abstract technology at that time? 11:48:57

20 A No, I just -- I don't recall any 11:49:01

21 kind of emphasis on that per se compared to 11:49:08

22 all the effort we were putting into 11:49:11

23 watermarking, which was taking all the -- as 11:49:14

24 far as I could tell, all the energies of the 11:49:17

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1 company and all the energies of engineering.

11:49:20

2 Q Okay.

11:49:22

3 But Scott Moskowitz emails  
4 you, it's true, in Exhibit 57 and is talking  
5 about signal abstracting; is that right?

11:49:23

11:49:25

11:49:29

6 A Right.

11:49:32

7 Q What's your understanding of why  
8 you and he were exchanging correspondence  
9 about signal abstracting at that time?

11:49:34

11:49:36

11:49:39

10 A Again, the context evades me this  
11 far out. That's the problem with email, you  
12 know what I mean? It doesn't record the  
13 whole story.

11:49:43

11:49:46

11:49:48

11:49:50

14 I'd have to look at emails  
15 before and after this and -- to get a sense  
16 of what the actual assumptions were and the  
17 context was.

11:49:51

11:49:53

11:49:57

11:49:59

18 Q So I'm going to quote again from  
19 Exhibit 57.

11:50:03

11:50:04

20 A Yes, sir.

11:50:05

21 Q Mr. Moskowitz states, "Abstracts of  
22 music or movies based on a massive reduction  
23 of the data of the actual signal yields a  
24 signal abstract, which is not additive as a

11:50:05

11:50:08

11:50:11

11:50:14

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1 watermark is'' --

11:50:17

2 A Right.

11:50:18

3 Q -- "but can be differentiated from

11:50:18

4 other similar recordings based on least

11:50:20

5 significant bit deferences."

11:50:24

6 Is that your understanding of

11:50:27

7 what signal abstracting technology was?

11:50:28

8 A Yes, that's an eloquent way to

11:50:31

9 compress that definition, yes.

11:50:35

10 Q What do you recall about at any

11:50:37

11 point in time, really, what Blue Spike's

11:50:39

12 business plans were regarding signal

11:50:40

13 abstracting?

11:50:43

14 A It wasn't something I was asked to

11:50:46

15 write about discretely, you know, on its own

11:50:48

16 as something we were promoting to our

11:50:52

17 investors.

11:50:55

18 Q Do you believe that the emphasis on

11:50:57

19 signal abstracting technology was something

11:50:58

20 Scott Moskowitz alone was focused on and not

11:51:01

21 so much the rest of the company?

11:51:04

22 A I'm sure it's something he took

11:51:06

23 into the -- the larger purview of interest;

11:51:08

24 but in terms of direct development, it was

11:51:11

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1

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

11:51:35

9

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

11:52:03

22

A

Mm-hmm.

11:52:04

23

Q

I'm trying to understand, is

11:52:05

24

that -- do you believe that that was a space

11:52:06





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1

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

A

Yes.

11:53:18

9

Q

Okay.

11:53:25

10

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

11:53:31

13

A

I did at one point, I guess.

11:53:33

14

Q

Okay.

11:53:34

15

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] recall just in general in,

11:53:54

23

let's say, the year 2000 -- do you recall

11:53:58

24

that there were more fingerprinting companies

11:54:02

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1 than there had been before, or anything about 11:54:04

2 that development? 11:54:07

3 A Not really. I never kept a count. 11:54:10

4 Q Well, in general, in the year 2000, 11:54:14

5 do you -- you know, were there lots of 11:54:19

6 companies responding to, for example, the 11:54:22

7 legal problems that Napster was having? 11:54:25

8 MR. ANDERSON: Object to form. 11:54:28

9 A Yes, I mean the market space -- 11:54:30

10 there was a failure of the market space to 11:54:34

11 provide market-making mechanisms. 11:54:37

12 So yes, there was a lot of 11:54:41

13 interest. There was whole websites dedicated 11:54:43

14 to, like, the new music market space until 11:54:46

15 such time as iTunes sort of expanded and sort 11:54:49

16 of captured a lot of that space. 11:54:53

17 Q Yes. 11:54:55

18 What do you mean by there 11:54:55

19 is -- there is -- you know, creating the 11:54:56

20 market spaces? 11:55:00

21 What do you mean by that at 11:55:01

22 the time? 11:55:03

23 A Replacing the record store and 11:55:04

24 creating a digital music market space that 11:55:07

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1 was as rational and as functional as the 11:55:13

2	physical market space of Tower Records, HMV	11:55:15
---	---	----------

3	Records, that kind of thing.	11:55:18
---	------------------------------	----------

4 It hadn't happened yet. 11:55:19

5 iTunes had yet to be developed to the extent 11:55:21

6 that it has now captured that market space, 11:55:23

7 developed it and captured it. So there was a 11:55:25

8 lot of creativity, a lot of talk, a lot of 11:55:27

9 let's try this, let's try that. 11:55:30

10	Q	What kind of solutions do you	11:55:32
----	---	-------------------------------	----------

```
11 recall in, let's say, '99 or 2000 to solve 11:55:33
```

12 [REDACTED]

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

[REDACTED]

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

11:56:03

23 [REDACTED]

11:56:09

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1	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	11:56:24
8	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	11:56:39
14	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	11:57:09



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Q Okay.

13

14

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17

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19

20

Q Okay.

21

22

23

24

Q Okay.

So you don't remember a

11:58:32

11:59:04

11:59:05

11:59:07

11:59:16

11:59:19

11:59:24

11:59:26

11:59:29

11:59:29

11:59:30

11:59:32

11:59:33

11:59:34

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1 hacking test in the SDMI watermarking -- 11:59:35

2 A No, not specifically. I'm bad that 11:59:40

3 way. 11:59:42

4 Q Okay. 11:59:42

5 Do you remember in 2000 Blue 11:59:46

6 Spike having interaction with a company 11:59:48

7 called [REDACTED]? 11:59:52

8 A No, not specifically. 11:59:57

9 Q Did you ever, like, go to meetings 12:00:04

10 with potential customers or partners of Blue 12:00:08

11 Spike? 12:00:10

12 A No. 12:00:12

13 Q Your job was more about writing 12:00:12

14 press releases and public-facing documents? 12:00:14

15 A Business plans, marketing plans, 12:00:17

16 communications instruments, that kind of 12:00:18

17 thing. Test work. 12:00:20

18 Q Okay. 12:00:26

19 [REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED] [REDACTED] 12:00:37

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23

24

[REDACTED]

[REDACTED]

Q Do you remember -- do you remember

Blue Spike having business called

interactions with [REDACTED]?

A They might have talked to them.

Were they from Boston? Were they from

Allston?

Q I'm not sure.

A Yeah. Possibly. I think it might

have come up in conversation.

Q Okay.

Do you remember Scour being a

company somewhat like Napster, in that it --

A I -- the vibe I get, it helped you

find the music you were interested in, and in

that way, yes.

Q Do you recall why Blue Spike was

having business interactions with Scour?

A You know, if you told me they were,

I would not be surprised, because I remember

the name. But I might be conflating

remembering the name, remembering their

enterprise with actually, you know, Scott

12:00:41

12:00:42

12:00:43

12:00:45

12:00:49

12:00:50

12:00:53

12:00:54

12:00:55

12:00:56

12:01:02

12:01:03

12:01:04

12:01:07

12:01:09

12:01:13

12:01:14

12:01:17

12:01:23

12:01:24

12:01:26

12:01:29

12:01:30



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1 and/or Gregg talking. 12:01:33

2 Q Do you remember a company called 12:01:39

3 eMusic? 12:01:40

4 A eMusic sounds vaguely familiar. 12:01:41

5 Q What do you recall about eMusic? 12:01:43

6 A Nothing. It could be me 12:01:44

7 remembering because it's just "i" this "e" 12:01:46

8 that, you know, which is attached to every 12:01:48

9 word now. eChair, eTable, iTable. 12:01:50

10 Q All right. 12:01:58

11 MR. RAMSEY: If we could 12:01:59

12 please mark Exhibit 58. 12:01:59

13 (Exhibit 58 marked for 12:02:02

14 identification.) 12:02:02

15 BY MR. RAMSEY: 12:02:02

16 Q All right. 12:02:19

17 You've been handed Exhibit 58, 12:02:20

18 which is an email dated December 5, 2000, 12:02:21

19 from Scott Moskowitz to Gregg Moskowitz, Mike 12:02:24

20 Berry and you, and it is labeled BLU0152989. 12:02:26

21 If you could take a moment and 12:02:35

22 look at Exhibit 58 and let me know when 12:02:37

23 you've been able to do so. 12:02:41

24 (Deponent read document.) 12:02:53

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1 Q So is Exhibit 58, this December 5, 12:03:03  
2 2000 email -- you know, is this the sort of 12:03:06  
3 ordinary day-to-day business communication 12:03:13  
4 that you would be having with the team at 12:03:15  
5 Blue Spike? 12:03:17

6 A Yes, yes. 12:03:18

7 Q I'm going to quote from Exhibit 58 12:03:18  
8 Mr. Moskowitz states, "Just to remind you, 12:03:21  
9 watermarking may not be the best technology 12:03:25  
10 for monitoring. Signal abstracts might be 12:03:27  
11 far more accurate and easier to implement. 12:03:30  
12 We do not have technology to do this, but we 12:03:32  
13 have filed two patents, and I have spoken to 12:03:35  
14 a number of companies which currently have 12:03:39  
15 the technology." 12:03:41

16 What is your recollection of 12:03:42  
17 why Mr. Moskowitz and you -- your team was 12:03:44  
18 talking about partnering with companies that 12:03:50  
19 provide signal abstracting? 12:03:55

20 A Because that's what they did. 12:03:58

21 Q Do you have any specific 12:03:59  
22 recollection of the companies that were being 12:04:01  
23 considered for partnership opportunities? 12:04:06

24 A Really -- really, no, no, I don't. 12:04:07

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1 But he did appreciate the difference. This 12:04:09  
2 was an honest assessment. This is Scott just 12:04:14  
3 being honest, you know, about why our stuff 12:04:18  
4 does what it does and why the other stuff 12:04:20  
5 does what it does. 12:04:22

6 Q It appears to me from Exhibit 58 12:04:23  
7 that the company was contemplating combining 12:04:25  
8 watermarking and signal abstracting. 12:04:27

9 Do you recall that as an 12:04:31  
10 effort? 12:04:32

11 A I recall Scott being very creative 12:04:33  
12 about looking for opportunities to partner, 12:04:35  
13 to animate any kind of market space that was 12:04:38  
14 sorely needed at the time, and this was 12:04:42  
15 pretty typical of discussions we had. 12:04:44

16 What it meant, you know, what 12:04:47  
17 was his frame of mind, I have -- you know, I 12:04:50  
18 really -- I can't say. 12:04:52

19 But this was pretty typical 12:04:53  
20 of, you know, attempts to animate a market 12:04:57  
21 space that needed technology to move. 12:05:01

22 Q So as an occurrence, this type of 12:05:03  
23 email in Exhibit 58 suggesting let's partner 12:05:06  
24 with other companies for signal abstracting 12:05:11

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1 was not a uncommon occurrence in the 12:05:17

2 business? 12:05:19

3 A It wasn't uncommon to have 12:05:20

4 discussions about partnering for different 12:05:21

5 things. 12:05:23

6 Q Yes. 12:05:23

7 A Partnering for signal abstraction, 12:05:23

8 I don't know if I can say that, you know, 12:05:26

9 definitively, but this -- 12:05:28

10 But in terms of general 12:05:30

11 business practice, Scott was alert to 12:05:31

12 opportunities, and this is one of them. 12:05:33

13 Q Okay. 12:05:35

14 Do you have any recollection 12:05:36

15 of how frequently throughout the year 2000 12:05:39

16 and 2001 there were talks about 12:05:41

17 fingerprinting versus watermarking, for 12:05:47

18 example? 12:05:50

19 A Not specifically. We just -- the 12:05:56

20 assumption was, what we do is watermarking, 12:05:57

21 and what we're pursuing right now is that -- 12:05:59

22 and it was true, in engineering the entire 12:06:01

23 focus was the watermarking technology. 12:06:04

24 This is I think representative 12:06:06

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1 of that. It didn't mean that there was no 12:06:07

2 interest in it at all, but the focus at the 12:06:10

3 time was completely on watermarking. 12:06:13

4 Q So why was Blue Spike from time to 12:06:15

5 time talking about partnering with companies 12:06:17

6 that do fingerprinting or signal abstracting? 12:06:22

7 A Because that's what they full 12:06:25

8 time -- 12:06:25

9 MR. ANDERSON: Object to form. 12:06:27

10 A -- and that's where their expertise 12:06:27

11 apparently was. 12:06:29

12 Q So was the idea to build greater 12:06:31

13 value by combining Blue Spike's watermarking 12:06:32

14 technology with some other fingerprint 12:06:34

15 technology to complement each other? 12:06:37

16 A Yes, that would be the idea, and he 12:06:39

17 had that kind of imagination. 12:06:41

18 Q And is that kind of combining of 12:06:43

19 watermarking and fingerprinting to create 12:06:45

20 more value of what is, you believe, 12:06:47

21 contemplated in Exhibit 58? 12:06:48

22 A Yes. He had a good technical 12:06:50

23 imagination. He had a realistic technical 12:06:53

24 imagination as opposed to an engineering 12:06:57

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1 imagination, which that would bring you to 12:06:59  
2 innovation without a market space need, per 12:07:00  
3 se. 12:07:03

4 Q I'm going to quote further from 12:07:04  
5 Exhibit 58 for the record. 12:07:05

6 Mr. Moskowitz states, "I do 12:07:07  
7 not have any problem offering both to 12:07:09  
8 demonstrate two systems, especially if we can 12:07:12  
9 get the technology from elsewhere and spend 12:07:14  
10 some time better crafting the technology to 12:07:18  
11 the task suggested." 12:07:21

12 Do you see that quote? 12:07:22

13 A Yes, sir. 12:07:23

14 Q So when Mr. Moskowitz states 12:07:27  
15 "Especially if we can get the technology from 12:07:29  
16 elsewhere," do you recall particularly what 12:07:31  
17 he was referring to? 12:07:33

18 A (Shakes head.) 12:07:37

19 Q No? 12:07:38

20 So you don't remember any 12:07:38  
21 companies in the -- in the signal abstracting 12:07:39  
22 space at that time? 12:07:41

23 A Not specifically. 12:07:42

24 Q All right. 12:07:47

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1	MR. RAMSEY: If we could	12:07:58
2	please mark Exhibit 59.	12:07:59
3	(Exhibit 59 marked for	12:08:00
4	identification.)	12:08:00
5	BY MR. RAMSEY:	12:08:01
6	Q All right.	12:08:18
7	You've been handed Exhibit 59,	12:08:19
8	which is a December 5, 2000 email from you to	12:08:20
9	Scott Moskowitz labeled BLU0152986.	12:08:25
10	If you could take a moment and	12:08:30
11	look at the document and let me know when	12:08:31
12	you've had the chance to do so.	12:08:33
13	(Deponent read document.)	12:08:54
14	Q Have you had a chance to look at	12:10:53
15	Exhibit 59?	12:10:54
16	A Yes.	12:10:56
17	Q I think it's easiest to read	12:10:56
18	Exhibit 59 from the back to the front.	12:10:58
19	A Bottom up, right, right.	12:10:59
20	Q If you look at the second page of	12:11:01
21	Exhibit 59, it starts with a quotation, "We	12:11:03
22	do not have technology to do this, but we	12:11:08
23	have filed two patents, and I have spoken to	12:11:10
24	a number of companies which currently have	12:11:12

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1	the technology."	12:11:14
2	Do you see that?	12:11:15
3	A Yes.	12:11:16
4	Q And do you believe that that	12:11:17
5	statement is a statement by Scott Moskowitz	12:11:18
6	about signal abstracting technology that we	12:11:20
7	just saw in Exhibit 58?	12:11:23
8	A Yes.	12:11:25
9	Q Then it appears that you respond to	12:11:27
10	Mr. Moskowitz's statement about signal	12:11:29
11	abstracting by asking a question, and I	12:11:31
12	quote, "Aren't the data files that are	12:11:33
13	rendered from the signals in Giovanni a kind	12:11:35
14	of abstract?" And then continues.	12:11:39
15	Do you see that?	12:11:42
16	A Yes.	12:11:42
17	Q Do you agree that's -- you're	12:11:43
18	asking Scott, don't we already have a kind of	12:11:45
19	signal abstracting technology?	12:11:48
20	A Right, yes.	12:11:50
21	Q If you could please turn to the	12:11:50
22	first page of 59, Exhibit 59.	12:11:52
23	In response to your question	12:11:57
24	about don't we already have a kind of signal	12:11:58



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1 abstracting technology, it appears that Scott 12:12:02  
2 Moskowitz responds "Absolutely not," and then 12:12:04  
3 proceeds to describe why he believes that -- 12:12:07  
4 that signal abstracting was not part of the 12:12:11  
5 watermarking. 12:12:14

6 A Right. 12:12:14

7 Q Do you remember this conversation 12:12:15  
8 and exchange with him? 12:12:18

9 A Not specifically, but this was 12:12:20  
10 pretty typical of our back-and-forth about 12:12:21  
11 how to describe the technology. 12:12:24

12 Q Okay. 12:12:28

13 So if you see on the first 12:12:28  
14 page of Exhibit 59 when Mr. Moskowitz is 12:12:29  
15 saying, No, we don't have signal abstracting 12:12:33  
16 technology, he -- he continues to talk about 12:12:36  
17 some companies doing this, and I quote, 12:12:38  
18 "'Some companies doing this include eTantrum, 12:12:44  
19 MusicBrainz, Neural Audio, Tuneprints, the 12:12:49  
20 new eMusic." 12:12:53

21 Do you see that? 12:12:56

22 A Yes. 12:12:57

23 Q Is it your understanding that this 12:12:57  
24 in exchange, Mr. Moskowitz is describing 12:12:58

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1 other companies doing signal abstracting? 12:13:00

2 A Yes. 12:13:02

3 Q Do you remember the names of any of 12:13:03

4 these companies now that you see this? 12:13:05

5 A Yes. eMusic sounded, you know, 12:13:08

6 familiar. Yes, it was a weird time. 12:13:13

7 Everybody was pitching these things. 12:13:17

8 Q What do you mean by that, it was a 12:13:19

9 weird time, everybody was pitching these 12:13:20

10 things? 12:13:22

11 A Oh, Napster is going to destroy the 12:13:22

12 industry unless there is a solution, so there 12:13:25

13 were a lot of solutions coming out, you know, 12:13:27

14 people trying stuff. The market space was 12:13:29

15 responding to a perceived need. 12:13:31

16 Q So do you believe that there are 12:13:33

17 lots more fingerprinting companies cropping 12:13:34

18 up in 2000 to solve the Napster problem than 12:13:37

19 before? 12:13:42

20 A Yes, that was their proposal. You 12:13:42

21 know they had -- that was their architectural 12:13:43

22 approach. 12:13:45

23 Q Do you recall any of these 12:13:46

24 fingerprint companies in 2000 that made 12:13:48

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1 particular progress in the market? 12:13:51

2 A Really, no. I didn't pay too much 12:13:56

3 attention to it after the company shut to 12:13:59

4 down or whatever happened to it. 12:14:03

5 Q Do you believe based on Exhibit 59 12:14:06

6 that Mr. Moskowitz was investigating the 12:14:08

7 market about fingerprinting technologies that 12:14:11

8 were out there? 12:14:13

9 A Do I believe that -- 12:14:15

10 Q Mr. Moskowitz was investigating the 12:14:17

11 market regarding what fingerprinting 12:14:18

12 technologies were available? 12:14:21

13 MR. ANDERSON: Object to form. 12:14:24

14 [REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]

[REDACTED] [REDACTED]? 12:14:42

21 A There was a couple that would 12:14:44

22 follow the SDMI thing, you know, you know, 12:14:46

23 trades like Billboard and stuff like that. 12:14:51

24 And then, you know, online publications -- 12:14:55

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W-E-B-N-O-I-Z-E?

A Yeah, something like that.

Q What was Webnoize?

A Cover the emerging digital music

space. I can remember the building. It was

on the website.

Q So would the Webnoize publication

routinely discuss companies like these

digital fingerprinting and watermarking

companies?

A It was their sort of editorial

profile to cover that kind of thing.

Q Okay.

And was Webnoize available

throughout all of 2000, to your knowledge?

A Yes, it was early -- in early and

out early, because I think it went out of

business -- it just disappeared from my

radar, and I don't even know if it's -- it

kept going that much longer after I left --

Blue Spike left operations, finished

12:15:05

12:15:08

12:15:10

12:15:12

12:15:15

12:15:20

12:15:22

12:15:24

12:15:27

12:15:29

12:15:30

12:15:32

12:15:34

12:15:34

12:15:37

12:15:41

12:15:44

12:15:47

12:15:50

12:15:52

12:15:54



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1	video.	12:16:55
2	MR. RAMSEY: Perfect, yes,	12:16:56
3	let's change the tape.	12:16:56
4	Q We're going to go off the record	12:16:57
5	for just a moment.	12:16:59
6	A Okay.	12:17:01
7	THE VIDEOGRAPHER: It is	12:17:01
8	12:10 p.m. We're going off the record on	12:17:02
9	Tape No. 1.	12:17:05
10	(Recess.)	12:20:23
11	THE VIDEOGRAPHER: It is	12:29:00
12	12:22 p.m. We're back on the record on Tape	12:29:01
13	No. 2.	12:29:07
14	BY MR. RAMSEY:	12:29:07
15	Q If you could go back to Exhibit 59	12:29:08
16	where Mr. Moskowitz is talking about his	12:29:09
17	signal abstracting technology --	12:29:11
18	A Mm-hmm.	12:29:13
19	Q -- there's a discussion where Mr.	12:29:13
20	Moskowitz states -- he's discussing, and I	12:29:15
21	quote, ' [REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	12:29:24
24	information theory is applied, as we	12:29:28

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1 discussed in two patents we filed in this 12:29:30

2 area." 12:29:31

3 Do you know what he was 12:29:32

4 talking about there? Do you understand what 12:29:33

5 that's about? 12:29:35

6 A I understand what he's trying to 12:29:36

7 explain. The specific -- yes, I understand 12:29:38

8 what he's trying to explain, yes, I get it. 12:29:48

9 Q What's the -- what is -- what is 12:29:55

10 being described regarding differentiating 12:29:56

11 different compression files of the same song? 12:29:58

12 A Do I understand that? 12:30:01

13 Q Yes. 12:30:02

14 Can you describe for me what 12:30:03

15 is -- what does that mean, to use signal 12:30:04

16 abstracts to differentiate different 12:30:09

17 compressions of the same song. 12:30:11

18 A There are many different 12:30:14

19 standards -- not standards. What would you 12:30:18

20 call them? 12:30:20

21 There are many different 12:30:21

22 programs for reducing an analogue source to a 12:30:28

23 digital file, and you end up with MP3s, oh, 12:30:33

24 gosh, there's a number of them out. 12:30:41

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1 THE VIDEOGRAPHER: WAV. 12:30:44

2 THE DEPONENT: WAV, yes. 12:30:46

3 THE VIDEOGRAPHER: AIF. 12:30:46

4 THE DEPONENT: Right. 12:30:46

5 A There's a number of them. 12:30:47

6 So what I think he's trying to 12:30:48

7 say here is, no matter what compression 12:30:50

8 algorithm is applied to reduce a source to a 12:30:52

9 digital file, these abstraction -- these 12:30:55

10 systems will be able to detect -- to produce 12:30:59

11 the abstraction of the signal and identify 12:31:03

12 the song no matter what compression algorithm 12:31:08

13 is employed, which is important, because 12:31:11

14 there's so many out -- especially at that 12:31:14

15 time. 12:31:16

16 Q I see. 12:31:16

17 So -- [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED] 12:31:32

23 A [REDACTED] [REDACTED]

[REDACTED] [REDACTED] 12:31:37



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1 that was employed, yes. 12:31:41

2 Q Okay. 12:31:42

3 A A good one would not care which 12:31:42

4 one. It would be accurate and precise in 12:31:44

5 identifying no matter what compression 12:31:48

6 algorithm was employed. 12:31:50

7 Q And is it your understanding that 12:31:51

8 based on Exhibit 59, that companies like 12:31:52

9 eTantrum, MusicBrainz, Neural Audio, 12:31:56

10 Tuneprints, eMusic were employing technology 12:32:00

11 that could identify a song no matter how it's 12:32:06

12 compressed? 12:32:12

13 A Yes. 12:32:13

14 Q Is that what Mr. Moskowitz is 12:32:14

15 saying? 12:32:15

16 A Right. 12:32:15

17 Q Do you remember a fellow named Matt 12:32:23

18 Ingalls, I-N-G-A-L-L-S? 12:32:25

19 A N-A-T was the first name? 12:32:29

20 Q Matt? 12:32:31

21 A Matt. 12:32:32

22 Q M-A-T-T, Matt. 12:32:32

23 A No. 12:32:36

24 Q All right. 12:32:37

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1	MR. RAMSEY: If we could	12:32:51
2	please mark Exhibit 60.	12:32:51
3	(Exhibit 60 marked for	12:32:52
4	identification.)	12:32:52
5	BY MR. RAMSEY:	12:32:52
6	Q All right.	12:33:09
7	You've been handed Exhibit 60,	12:33:09
8	which is a February 5, 2001 email from Scott	12:33:10
9	Moskowitz to Gregg Moskowitz, Mike Berry and	12:33:14
10	yourself, labeled BLU0160758.	12:33:16
11	If you could take a look at	12:33:22
12	this document for a minute and let me know	12:33:23
13	when you've had a chance to review it?	12:33:26
14	A Sure.	12:33:28
15	(Deponent read document.)	12:33:29
16	A Varence [phonetic]. I remember	12:34:51
17	them.	12:34:53
18	(Deponent read document.)	12:35:02
19	A Okay.	12:46:28
20	Q Okay.	12:46:28
21	So Exhibit 60 is an email	12:46:28
22	dated February 5, 2001 between Scott	12:46:30
23	Moskowitz and you and other members of the	12:46:35
24	team, right?	12:46:37

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1	A	(Nods.)	12:46:38
2	Q	Is this -- is this a kind of normal	12:46:39
3		business communication of Blue Spike at that	12:46:42
4		time?	12:46:45
5	A	Yes.	12:46:46
6	Q	Okay.	12:46:46
7		So what -- in -- what do	12:46:47
8		you -- what do you think was -- what is your	12:46:49
9		description of the email portion of	12:46:52
10		Exhibit 60?	12:46:55
11	A	You know, he's just describing	12:47:03
12		lines of business.	12:47:04
13	Q	And by "he," you mean Scott	12:47:05
14		Moskowitz?	12:47:07
15	A	Yes.	12:47:07
16	Q	There are a number of companies	12:47:08
17		mentioned in the email at Exhibit 60.	12:47:09
18	A	Mm-hmm.	12:47:13
19	Q	Were those companies that Blue	12:47:14
20		Spike was considering partnering with at the	12:47:14
21		time?	12:47:17
22	A	Some are competitors; some are	12:47:18
23		partners. You know, there's a lot of	12:47:20
24		different companies discussed.	12:47:21

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1	Q	Okay.	12:47:22
2		And you notice in Exhibit 60,	12:47:24
3		there's a couple of documents attached to the	12:47:25
4		email, correct?	12:47:28
5	A	Yes.	12:47:29
6	Q	If you turn to the page labeled	12:47:30
7		BLU0160759, the second page in the document.	12:47:33
8	A	What's the last three, 7 --	12:47:40
9	Q	759.	12:47:41
10	A	I'm here.	12:47:42
11	Q	So your understanding is that that	12:47:57
12		document starting at 759 is an attachment to	12:48:01
13		February 5 email?	12:48:05
14	A	Mm-hmm.	12:48:07
15	Q	And the document beginning at 759,	12:48:11
16		is that a discussion of various business	12:48:13
17		opportunities with respect to major labels	12:48:16
18		and performing rights organizations?	12:48:19
19	A	Mm-hmm.	12:48:22
20	Q	Okay.	12:48:22
21		If you could turn to the page	12:48:24
22		labeled BLU0160760, and let me know when	12:48:26
23		you're there.	12:48:34
24	A	Okay.	12:48:34

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1 Q On the page ending 760 in 12:48:35

2 Exhibit 60, there's a discussion of, quote, 12:48:37

3 signal monitoring efforts. 12:48:41

4 Do you see that? 12:48:42

5 A Mm-hmm. 12:48:43

6 Q What was being discussed here 12:48:43

7 regarding signal monitoring? 12:48:46

8 (Deponent read document.) 12:48:49

9 A My unfamiliarity with all of the 12:49:11

10 acronyms really at this distance at this time 12:49:14

11 doesn't give me a lot of -- a lot to go on. 12:49:22

12 It looks like a signal, the 12:49:26

13 development of a signal monitoring product as 12:49:28

14 an opportunity, but a lot of the acronyms 12:49:30

15 right now, I just don't recall them. 12:49:33

16 Q And by -- you mean the names of 12:49:35

17 companies, for example? 12:49:37

18 A Yes. I don't know if they're 12:49:39

19 companies or -- or technology. Sometimes 12:49:41

20 like Xerox, Xerography, you know, it gets 12:49:45

21 spelled around. 12:49:49

22 Compare with ISWC, ISRC, I 12:49:51

23 just -- I can't even begin to parse that, you 12:49:55

24 know, right now, at this distance. 12:49:59

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1 Q Sure.

12:50:01

2 If I can turn your attention

12:50:02

3 to the bottom of the page labeled -- with the

12:50:04

4 number ending 760, do you --

12:50:06

5 Are you at the bottom of that

12:50:09

6 page?

12:50:10

7 A Yes.

12:50:11

8 Q The document states, "[REDACTED]

[REDACTED]

9 [REDACTED]

[REDACTED]

10 [REDACTED]

[REDACTED]

11 [REDACTED]

[REDACTED]

12 [REDACTED]

[REDACTED]:32

13 A Right.

12:50:35

14 Q And it goes on.

12:50:35

15 Do you see that list?

12:50:36

16 A Yes.

12:50:37

17 Q [REDACTED]

[REDACTED]

18 [REDACTED]

[REDACTED]

19 [REDACTED]

[REDACTED]

20 [REDACTED]

[REDACTED]

21 [REDACTED]

[REDACTED]

22 What do you recall about

12:50:51

23 discussions from this time in spring 2001

12:50:52

24 about partnering with companies such as those

12:50:54

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1 listed here in this [REDACTED]

2 [REDACTED] 12:51:00

3 A Specifically? I don't, at this 12:51:01

4 distance. 12:51:03

5 Q At that time, did you have any lead 12:51:04

6 role in shaping potential partnership? 12:51:05

7 A No. 12:51:08

8 Q Okay. 12:51:09

9 A No, this is -- you've got more and 12:51:09

10 have access to more of the record, I think, 12:51:13

11 than I do. 12:51:16

12 I wasn't there to broker deals 12:51:17

13 for them, not for this stuff. 12:51:18

14 Q [REDACTED] [REDACTED]

15 [REDACTED] [REDACTED]

16 [REDACTED] [REDACTED]

17 [REDACTED] [REDACTED]

18 [REDACTED] 12:51:32

19 A These were things that my sense, 12:51:34

20 given the conversations and working there, 12:51:37

21 was both Gregg and Scott would have hands in 12:51:40

22 this. Me, I wouldn't get in front of these 12:51:43

23 kinds of conversations. I wasn't a music 12:51:46

24 business guy. Scott was. He had worked, you 12:51:48

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1 know, for a good long time in this country 12:51:51

2 and overseas. 12:51:54

3 Q What's your understanding of 12:51:54

4 Mr. Moskowitz's -- Scott Moskowitz's 12:51:55

5 background in the music industry? 12:51:57

6 A He brokered music through the gray 12:51:59

7 market in Japan, you know, sort of pioneered 12:52:01

8 it in a way, and he understood the marketing 12:52:07

9 of music in conventional channels, so he had 12:52:12

10 an expert's map of the land. 12:52:14

11 So for that, he would do -- he 12:52:19

12 would, you know, lead all the business 12:52:21

13 discussions on this. 12:52:24

14 Q Was Mr. Moskowitz knowledgeable 12:52:27

15 about music-related technologies developed at 12:52:29

16 the time, 2001, for example? 12:52:33

17 A Oh, yes, he was expert in both, 12:52:34

18 both of them. 12:52:36

19 Q There's a particular company in 12:52:44

20 this list on page 760, Muscle Fish. 12:52:45

21 Does that name ring a bell to 12:52:47

22 you? 12:52:51

23 A No. 12:52:52

24 Q Okay. 12:52:56



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1 Looking at page 760, [REDACTED]

2 [REDACTED]

3 [REDACTED]

12:53:10

4 (Deponent read document.)

12:53:22

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

12:53:44

9 But eMusic, I recognize. The

12:53:44

10 rest -- but I got to tell you, it was a busy

12:53:48

11 space at that time. It was very busy. It

12:53:52

12 was hard to keep up with them all, even in

12:53:54

13 the midst of the development of Blue Spike.

12:53:57

14 Q When you say the "space," what do

12:53:59

15 you mean by "space" when you say it was a

12:54:02

16 busy space?

12:54:03

17 A Management of music in an

12:54:04

18 electronic commerce demand.

12:54:06

19 Q Okay.

12:54:08

20 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

12:54:14

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1

[REDACTED]

[REDACTED]

2

[REDACTED]

[REDACTED]

3

[REDACTED]

[REDACTED]

4

[REDACTED]

12:54:25

5

Q Do you believe these companies were

12:54:29

6

generally well known in the business?

12:54:30

7

A I think they were generally known

12:54:33

8

in the business. But the business, you have

12:54:34

9

to understand, was real small at the time.

12:54:37

10

It wasn't -- it was sort of inside baseball.

12:54:39

11

It was an emerging business

12:54:43

12

space, potentially had had enormous

12:54:45

13

opportunity for a lot of different companies

12:54:47

14

at the time before iTunes just sort of

12:54:50

15

enveloped it all.

12:54:53

16

But yes, they were probably

12:54:55

17

well known amongst the insiders that were

12:54:57

18

talking about this kind of stuff and trying

12:55:00

19

to make something out of the opportunity.

12:55:02

20

Q Okay.

12:55:04

21

Other than -- so just -- you

12:55:04

22

said you recognize the AC Nielsen and

12:55:07

23

Arbitron.

12:55:10

24

What's your understanding of

12:55:11

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1 those companies, what they did?

12:55:12

2 A

█

█

█

█

█

8

█

█

█

█

13

█

15

Q And you also notice there is a --

12:55:50

16

starting at page BLU0160762

█

█

19

Do you see that?

12:56:02

12:56:04

20

A Mm-hmm.

12:56:04

21

Q Did you have any involvement in

12:56:05

22

that agreement?

12:56:06

23

A Not at all.

12:56:07

24

Q Do you remember generally why it

12:56:08

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1 was attached and being discussed to this 12:56:09

2 email? 12:56:11

3 A Update to the team about deals that 12:56:12

4 were going through. 12:56:15

5 Q Okay. 12:56:17

6 And is it your understanding 12:56:18

7 that Digitale Hanse -- Hanse had 12:56:19

8 fingerprinting technology that Blue Spike was 12:56:23

9 going to use or some other technology? 12:56:25

10 A Really, I was not part of this 12:56:27

11 discussion, and I don't remember anything 12:56:29

12 about it. 12:56:31

13 Q Okay. 12:56:39

14 MR. RAMSEY: If we could 12:57:05

15 please mark Exhibit 61. 12:57:07

16 (Exhibit 61 marked for 12:57:08

17 identification.) 12:57:08

18 BY MR. RAMSEY: 12:57:14

19 Q All right. 12:57:14

20 You've been handed Exhibit 61, 12:57:15

21 which is Bates-labeled BLU0131214, and it's 12:57:16

22 entitled Watermarking Services, [REDACTED] [REDACTED]

[REDACTED] 12:57:26

24 Take a moment and take a look 12:57:27

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1 and let me know when you've had a chance to 12:57:29  
2 review the document. 12:57:31

3 (Deponent read document.) 12:57:32

4 MR. ANDERSON: Gabe, can you 12:58:49  
5 give me the end range on the Bates numbers 12:58:49  
6 for this exhibit? 12:58:53

7 MR. RAMSEY: Yes, sure, it's 12:58:54  
8 BLU0131214 through 1223. 12:58:55

9 MR. ANDERSON: Thank you. 12:59:07  
10 Can you also give me the ranges 12:59:08  
11 for Exhibit 60? 12:59:09

12 MR. RAMSEY: 60, yes. It's 12:59:11  
13 160758 through 160779. 12:59:14

14 MR. ANDERSON: Great, thank 12:59:23  
15 you. 12:59:23

16 (Deponent read document.) 13:03:15

17 A Okay. 13:03:40

18 Q All right. 13:03:41

19 So you've had a chance to look 13:03:41

20 at Exhibit 61? 13:03:43

21 A Mm-hmm. 13:03:45

22 Q [REDACTED] [REDACTED]

[REDACTED] [REDACTED] 13:03:47

24 Were you involved in this -- 13:03:52

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1	this [REDACTED]?	13:03:53
2	A There's a good possibility, yeah.	13:03:54
3	Q Okay.	13:03:56
4	I'm going to come back to	13:03:59
5	Exhibit 61, but I'd next like to mark Exhibit	13:04:00
6	62.	13:04:04
7	A Sure.	13:04:04
8	(Exhibit 62 marked for	13:04:05
9	identification.)	13:04:05
10	BY MR. RAMSEY:	13:04:05
11	Q Exhibit 2 is labeled -- sorry,	13:04:05
12	Exhibit 62 is labeled BLU0160755.	13:04:26
13	It's an email, February 15,	13:04:31
14	2001, from Scott Moskowitz to Gregg	13:04:33
15	Moskowitz, Mike Berry and to you.	13:04:36
16	Take just a minute to look at	13:04:40
17	the email and let me know when you've been	13:04:41
18	able to do that.	13:04:43
19	(Deponent read document.)	13:04:44
20	Q So Exhibit 62 says, and I quote, "[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]n." And then it continues.	13:05:57
24	Do you see that?	13:06:00

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1 A Yes. 13:06:01

2 Q Based on the content of Exhibit 62, 13:06:01

3 do you believe that the [REDACTED] [REDACTED]

4 [REDACTED] [REDACTED]

5 [REDACTED] 13:06:12

6 A It looks like that, yes. 13:06:12

7 Q Okay. 13:06:14

8 If you could turn back to 13:06:17

9 Exhibit 61, which is the [REDACTED]. 13:06:18

10 And turn particularly to the 13:06:26

11 page ending in 221 in Exhibit 61. 13:06:27

12 A Yes. 13:06:31

13 Q And on the page ending in 221 in 13:06:31

14 Exhibit 61, there's a discussion of [REDACTED] [REDACTED]

15 [REDACTED] 13:06:39

16 Do you see that? 13:06:41

17 A Signal abstract -- yes, sir. 13:06:45

18 Q And so it looks to me on page 221 13:06:46

19 of this [REDACTED], [REDACTED] [REDACTED]

20 [REDACTED] [REDACTED]

21 [REDACTED] 13:06:56

22 A Mm-hmm. 13:06:58

23 Q What do you recall about the 13:06:59

24 addition of signal abstract technology to the 13:07:00

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1 product offerings that are being made by Blue  
2 Spike?

13:07:04

13:07:07

3 A What do I recall. Really, I mean,  
4 what here looks like a reasonable  
5 representation in terms of some discussions  
6 we had, but specifically I really don't  
7 remember anything per se.

13:07:16

13:07:24

13:07:27

13:07:29

13:07:31

8 Q Okay.

13:07:33

9 Do you understand it to be

13:07:34

10 true that at some point along the way in

13:07:36

11 2000, Blue Spike started discussing signal

13:07:38

12 abstracting technology as part of its -- its

13:07:44

13 business proposal?

13:07:48

14 A Or possibly before.

13:07:48

15 MR. ANDERSON: Object to form.

13:07:50

16 A You know, I mean the granularity of  
17 my memory at that time is not as great as the  
18 record.

13:07:51

13:07:58

13:08:01

19 Q Well, what do you remember about

13:08:03

20 the -- just in general about signal abstract

13:08:04

21 technology in the context of what Blue Spike

13:08:07

22 was doing as a business?

13:08:10

23 A It was another approach.

13:08:11

24 MR. ANDERSON: Sorry, object

13:08:14



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1 to form. Go ahead. 13:08:15

2 A It was -- our focus was digital 13:08:18

3 watermarking, very specifically being able to 13:08:20

4 identify copy per copy per copy as discrete 13:08:24

5 and distinguishable object was the key 13:08:30

6 differentiator of our architecture to other 13:08:34

7 stuff that was out there and available at the 13:08:37

8 time. 13:08:40

9 That's what we were 13:08:42

10 developing. This other stuff was other 13:08:43

11 stuff. 13:08:46

12 Q [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED] 13:08:59

17 A Really, and this is speculating, 13:09:00

18 because I'm not the expert of experts, it 13:09:02

19 probably has to do with speed of 13:09:05

20 interpretation. 13:09:08

21 [REDACTED] [REDACTED] [REDACTED]

[REDACTED] [REDACTED] 13:09:09

23 A [REDACTED] [REDACTED]

[REDACTED] [REDACTED] 13:09:13

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1

[REDACTED]

[REDACTED]

2

[REDACTED]

[REDACTED]

3

[REDACTED]

[REDACTED]

4

[REDACTED]

[REDACTED]

5

[REDACTED]

13:09:24

6

Q Mm-hmm.

13:09:28

7

A But it's a different approach for,

13:09:29

8

in a way, a different application to

13:09:31

9

gather -- you know, if you look at both

13:09:33

10

approaches, there's a million things you can

13:09:35

11

do. You just have to make up your mind

13:09:37

12

what's worth doing.

13:09:40

13

But for this, apparently, it

13:09:41

14

looks like the [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

13:09:52

19

Q All right.

13:09:52

20

So regardless of the

13:09:53

21

motivation, you believe that this [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]:01

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1 A Yes.

13:10:03

2 Q And those approaches were --

13:10:04

3 watermarking is one approach and signal

13:10:05

4 abstracting is another?

13:10:08

5 A Yes.

13:10:11

6 Q On page 221 of Exhibit 61, it is

13:10:15

7 stated that, "[REDACTED]

8 [REDACTED]

9 [REDACTED]"

13:10:27

10 Do you see that?

13:10:28

11 A Yes.

13:10:30

12 Q [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

13:10:42

17 A To my knowledge, engineering did

13:10:44

18 not embark on that kind of enterprise.

13:10:46

19 Q Okay.

13:10:49

20 In the same portion of

13:10:51

21 page 221 in Exhibit 61, it is stated, "[REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

13:11:03

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1 [REDACTED] 13:11:06

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED] 13:11:30

9 Q In page 221 where we're looking 13:11:33  
10 about signal abstracting, the discussion 13:11:37  
11 continues to talk about legacy releases. 13:11:39

12 Do you see that? 13:11:41

13 A What graph? Last graph? 13:11:42

14 Q Second paragraph in page 221. 13:11:45

15 (Deponent read document.) 13:11:48

16 A Yes. 13:11:58

17 Q So explain to me what Exhibit 61 is 13:11:59  
18 talking about in terms of why signal 13:12:04  
19 abstracting would be used with respect to 13:12:06  
20 legacy releases of content? 13:12:09

21 [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] 13:12:23

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1	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
12	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
15	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]

13:12:54

13:13:03

13:13:23

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1	Q	Okay.	13:13:26
2		Do you recall presentations	13:13:32
3		such as the [REDACTED] in Exhibit 61	13:13:33
4		[REDACTED]	[REDACTED]
5		[REDACTED]	13:13:38
6	A	Not at this distance.	13:13:40
7	Q	Okay.	13:14:07
8		Do you recall a gentleman	13:14:08
9		named Elliot Mazer, M-A-Z-E-R?	13:14:09
10	A	No.	13:14:12
11	Q	Other than -- than Scott Moskowitz,	13:14:17
12		Gregg Moskowitz and Mike Berry, who else did	13:14:21
13		you have interactions with at Blue Spike?	13:14:23
14	A	This long-suffering engineering	13:14:26
15		assistant out in Phoenix.	13:14:28
16	Q	What was this person's name?	13:14:31
17	A	I forget his name. He was working	13:14:32
18		all the time.	13:14:34
19	Q	Okay.	13:14:34
20	A	Yes.	13:14:35
21	Q	It was not Mike Berry; it	13:14:35
22		was somebody --	13:14:37
23	A	It was Mike Berry's assistant.	13:14:37
24	Q	Okay.	13:14:39

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1 A They were both working all the 13:14:40

2 time. 13:14:41

3 Q Okay. 13:14:43

4 What did you interact with 13:14:43

5 this engineer about? 13:14:45

6 A Testing. 13:14:47

7 Q And testing of what? 13:14:48

8 A The fidelity of the finished -- the 13:14:51

9 finished music after it had been watermarked. 13:14:59

10 It was pretty intensive. 13:15:03

11 This was all during the time 13:15:04

12 of getting ready for the SDMI trials, so 13:15:05

13 those guys didn't sleep. 13:15:09

14 Q Do you remember a company called 13:15:15

15 Worldtrax, W-O-R-L-D-T-R-A-X? 13:15:16

16 A Not specifically. I read about it 13:15:21

17 here in the documentation you've traded, but 13:15:23

18 not specifically. 13:15:26

19 MR. RAMSEY: All right. If we 13:16:05

20 could please mark Exhibit 63. 13:16:06

21 (Exhibit 63 marked for 13:16:08

22 identification.) 13:16:08

23 BY MR. RAMSEY: 13:16:26

24 Q All right. 13:16:26

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1	You've been handed Exhibit 63,	13:16:27
2	which is labeled BLU0230657, and it appears	13:16:28
3	to be an email exchange dated April 21, 2001	13:16:34
4	between you and others.	13:16:38
5	A Mm-hmm.	13:16:39
6	Q Take a minute and just look at the	13:16:40
7	document and let me know when you've had a	13:16:41
8	chance to look at it.	13:16:44
9	(Deponent read document.)	13:16:44
10	A Oh, from Bob.	13:16:46
11	(Deponent read document.)	13:16:46
12	A Oh, Judge Patel, a personal hero.	13:18:30
13	I wrote a piece about one of her decisions	13:18:34
14	for Wired. I forget -- but she's a hot	13:18:36
15	ticket. She did such a beautiful job on a	13:18:39
16	couple of cases.	13:18:41
17	(Deponent read document.)	13:18:42
18	A Okay.	13:20:01
19	Q All right.	13:20:01
20	So in Exhibit 63 at the	13:20:02
21	bottom, it appears that somebody forwards to	13:20:03
22	you on April 20, 2001 an article entitled	13:20:06
23	"Napster to Use Fingerprinting Technology."	13:20:11
24	Is that right?	13:20:14



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1 A Mm-hmm. 13:20:15

2 Q What's this article about that was 13:20:15

3 forwarded to you on April 20? 13:20:18

4 A Oh, it's about Napster adopting 13:20:19

5 Relatable to be able to report out and 13:20:21

6 control the movement of music across its 13:20:26

7 network. 13:20:29

8 Q What was [REDACTED] [REDACTED]

9 [REDACTED] [REDACTED] [REDACTED] [REDACTED]

10 [REDACTED] [REDACTED] [REDACTED] 13:20:32

11 A [REDACTED] [REDACTED]

12 [REDACTED] [REDACTED] 13:20:35

13 Q Okay. 13:20:37

14 And is this sort of [REDACTED] [REDACTED]

15 [REDACTED] [REDACTED] [REDACTED] [REDACTED]

16 [REDACTED] [REDACTED] [REDACTED] [REDACTED]

17 [REDACTED] [REDACTED] 13:20:44

18 A You mean digital watermarking 13:20:48

19 technologies? 13:20:50

20 Q [REDACTED] [REDACTED]

21 [REDACTED] [REDACTED] [REDACTED] [REDACTED]

22 [REDACTED] [REDACTED] 13:20:55

23 A [REDACTED] [REDACTED]

24 [REDACTED] [REDACTED] 13:21:01

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1 in that way, yes, absolutely. 13:21:04

2 Q Okay. 13:21:07

3 [REDACTED] [REDACTED]

4 [REDACTED] [REDACTED]

5 [REDACTED] [REDACTED]

6 [REDACTED] [REDACTED]

7 [REDACTED] [REDACTED] 13:21:19

8 Q He asked you, "Good news or bad 13:21:20

9 news" about the article, right? 13:21:21

10 A Right. 13:21:22

11 Q And you respond "Stupid news," and 13:21:23

12 then describe your reaction, correct? 13:21:27

13 A Mm-hmm. 13:21:29

14 Q What was your concern about Napster 13:21:31

15 using fingerprinting technology? 13:21:34

16 A It wasn't complete. 13:21:35

17 Q What was not complete about the 13:21:37

18 fingerprinting technology? 13:21:40

19 A It didn't drill down to the very 13:21:42

20 specific object, copy, context and all that 13:21:43

21 stuff. 13:21:46

22 Q Okay. 13:21:47

23 Was it your view that 13:21:47

24 watermarking would have been a better 13:21:48

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1 solution for the Napster problem than 13:21:50

2 fingerprinting technology? 13:21:54

3 A It would give you the complete 13:21:55

4 solution, and it would give you a lot of 13:21:56

5 different approaches for different kinds of 13:21:58

6 scenarios. 13:22:00

7 I mean, a lot of the 13:22:01

8 technology was also used for, like, a song. 13:22:02

9 And unfortunately, or fortunately, or just 13:22:04

10 the fact is, a lot of listening doesn't 13:22:10

11 happen at the song level. A lot of people go 13:22:11

12 home and they put on is Sibelius Symphony No. 13:22:14

13 2 because they need to walk away from 13:22:18

14 everything else. 13:22:20

15 And I don't know how this 13:22:21

16 stuff would even work there. Watermarking in 13:22:22

17 those situations will give you much more 13:22:25

18 opportunity to identify, to purchase, to 13:22:28

19 trade, to save, to -- to reference, you know, 13:22:31

20 whereas the abstraction -- the fingerprinting 13:22:36

21 stuff, you know, it only can do one thing. 13:22:41

22 And how well it can do it, I don't know. 13:22:45

23 The gift of watermarking is it 13:22:49

24 can give you a very discrete identifier that 13:22:51

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1	can do anything you want with it. You can	13:22:53
2	use it like a bar code, you can use it like a	13:22:57
3	phone number. You can use it like a Social	13:22:59
4	Security number.	13:23:00
5	You know what I mean? It's	13:23:02
6	much more flexible.	13:23:03
7	Q      I notice -- so in your email	13:23:05
8	response where you in Exhibit 63 discuss the	13:23:08
9	limitations of fingerprinting --	13:23:11
10	A      Right.	13:23:12
11	Q      -- you copy Scott Moskowitz and	13:23:12
12	Mike Berry, right?	13:23:14
13	A      Mm-hmm.	13:23:15
14	Q      Is this kind of debate about the	13:23:18
15	pros and cons of watermarking versus	13:23:20
16	fingerprinting -- again, was this kind of an	13:23:23
17	ordinary type of conversation that occurred	13:23:25
18	regularly?	13:23:28
19	A      Yeah, but I was talking to the	13:23:29
20	choir.	13:23:30
21	Q      What do you mean by that?	13:23:31
22	A      We were advocates of watermarking	13:23:32
23	technology, you know.	13:23:34
24	Q      We've seen a couple of emails today	13:23:42

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1 where the team at Blue Spike throughout 2000 13:23:44

2 and into 2001 are having this debate about 13:23:47

3 watermarking versus fingerprinting, correct? 13:23:50

4 A Right. 13:23:52

5 Q Having seen a number of emails 13:23:56

6 having that debate, was that an important 13:23:58

7 part of Blue Spike's business conversation at 13:24:00

8 the time? 13:24:02

9 MR. ANDERSON: Object to form. 13:24:05

10 A It was the background. It was part 13:24:06

11 of how we distinguished ourselves. It was 13:24:08

12 sort of the assumptions of -- what's it 13:24:13

13 called, the technological architectures that 13:24:16

14 could be applied to the question of how do 13:24:20

15 you manage digital content. 13:24:22

16 Q And so in 2000 and 2001, is it true 13:24:24

17 that Blue Spike had to understand the 13:24:29

18 benefits and the pros and cons of 13:24:32

19 fingerprinting versus watermarking in order 13:24:34

20 to compete? 13:24:35

21 A Yes. 13:24:37

22 MR. ANDERSON: Object to form. 13:24:39

23 Q Do you recall ever talking with 13:24:43

24 Mike Berry about how one would build a 13:24:46

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1 fingerprinting technology? 13:24:50

2 A No. 13:24:52

3 Q Okay. 13:24:52

4 So that was more his technical 13:24:53

5 domain, not, kind of, your domain as the 13:24:56

6 media guy? 13:25:03

7 A Yes, it was really his domain. And 13:25:04

8 when we did talk about it, we talked about 13:25:06

9 the challenges of fidelity. 13:25:08

10 He is a musician. I'm a brass 13:25:10

11 player. So we kind of gravitate towards 13:25:13

12 those kind of aesthetic appreciations. 13:25:16

13 Q Okay. 13:25:18

14 So in the spring of 2001, 13:25:27

15 you're emailing around this article of 13:25:30

16 Napster. 13:25:33

17 Was Napster a widely discussed 13:25:34

18 topic in your business, in Blue Spike's 13:25:36

19 business at the time? 13:25:38

20 A It wasn't discussed. It was just 13:25:40

21 assumed -- Napster was a living problem 13:25:42

22 statement. 13:25:44

23 Q What do you mean by that? 13:25:45

24 A A problem statement. It's just an 13:25:47

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1 engineering term. It's the statement that 13:25:49  
2 organizes your thinking about engineering a 13:25:54  
3 solution. 13:25:56

4 Napster -- instead of saying 13:25:58  
5 there is a need for a way to manage digital 13:26:01  
6 content so it can be traded in a digital 13:26:04  
7 market space, you didn't have to say that. 13:26:09  
8 You just pointed to Napster because, it was 13:26:11  
9 proof there was the problem. The market had 13:26:14  
10 failed to organize a way to rationally trade, 13:26:16  
11 buy and manage digital content. 13:26:19

12 Q Do you believe that the Napster 13:26:22  
13 problem in the year 2000 drove the creation 13:26:24  
14 and presence of all these fingerprinting 13:26:26  
15 companies? 13:26:29

16 A Yes, it was a big part of it. It 13:26:30  
17 was the living, breathing problem statement. 13:26:32  
18 And you can do calculations of what it was 13:26:34  
19 costing your company. It was perfect. 13:26:37

20 You know, if you can count -- 13:26:39  
21 if you could -- let's say you -- I don't know 13:26:41  
22 what access they had to their database; but, 13:26:43  
23 you know, if I had a fingerprinting company, 13:26:45  
24 and they probably all did this, and I could 13:26:46

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1 get the whole database, I would grab it, 13:26:49  
2 watermark it and figure out which companies 13:26:50  
3 those belonged to and say a 99 cents a song, 13:26:54  
4 you've just lost \$15 million this month, bah, 13:26:57  
5 bah, bah. 13:27:00

6 So they were probably doing 13:27:01  
7 stuff like that. It was a problem 13:27:02  
8 statement -- a living problem statement that 13:27:04  
9 you could point to a solution and therefore 13:27:05  
10 savings and come up with a -- any number of 13:27:08  
11 scenarios to make it a rational -- the 13:27:11  
12 solution rationally priced. 13:27:15

13 Q Yes. 13:27:16

14 We've talked about a number of 13:27:17  
15 companies, Tuneprint, Cantometrics, 13:27:18  
16 Relatable, a number of others. 13:27:21

17 Do you believe that Napster 13:27:25  
18 and the Napster problem was driving the 13:27:27  
19 creation of those types of companies in 2000? 13:27:29

20 A Yes, yes. Very much so. They did 13:27:31  
21 us all a favor, and it's just displaying -- 13:27:38  
22 unless you organize the market and make it 13:27:42  
23 easy for people to pay and participate, this 13:27:44  
24 is what happens. 13:27:46





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24

Q

Q

Q

Q

A

Q

Q

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] who was

the vice president of [REDACTED]

[REDACTED] whatever that meant at the time.

Okay.

And what was Gregg Miller's

role in relation to Blue Spike?

[REDACTED]

[REDACTED]

[REDACTED]

Okay.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

But they needed to keep things

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

13:29:04

[REDACTED]

13:29:07

13:29:10

13:29:10

13:29:11

[REDACTED]

[REDACTED]

13:29:17

13:29:19

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

13:29:34

13:29:35

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1 going. Engineering is always twice as 13:29:38

2 expensive and takes twice as long as you 13:29:41

3 would ever expect, so yes. 13:29:44

4 Q Okay. 13:29:45

5 [REDACTED] [REDACTED]

6 [REDACTED] [REDACTED]

7 [REDACTED] [REDACTED] 13:29:50

8 Q What happened with his relationship 13:29:51

9 with the company? 13:29:52

10 A I have no idea. I think he wrote a 13:29:52

11 business plan and shopped it around. 13:29:54

12 Q [REDACTED] [REDACTED]

13 [REDACTED] [REDACTED]

14 [REDACTED] [REDACTED] 13:29:58

15 A I don't think so, because I 13:29:59

16 remember the -- you know, [REDACTED] [REDACTED]

17 [REDACTED] [REDACTED]

18 [REDACTED] [REDACTED]

19 [REDACTED] [REDACTED] 13:30:09

20 But yes, I think -- [REDACTED] [REDACTED]

21 [REDACTED] [REDACTED]

22 [REDACTED] [REDACTED] 13:30:18

23 Q [REDACTED] [REDACTED]

24 [REDACTED] [REDACTED] 13:30:23

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1 [REDACTED] 13:30:26

2 A [REDACTED] [REDACTED]

3 [REDACTED] [REDACTED]

4 [REDACTED] [REDACTED]

5 [REDACTED] [REDACTED]

6 [REDACTED] [REDACTED]

7 [REDACTED] 13:30:43

8 Also, it wasn't clear the 13:30:44

9 market was forming, you know, the way it -- 13:30:45

10 everyone had hoped. We had hoped standards 13:30:47

11 would be established, conventions would be 13:30:50

12 established. They would choose Blue Spike, 13:30:52

13 you know, for whatever reasons, you know. 13:30:56

14 And the market would form and, you know, we'd 13:30:59

15 have, you know, iTunes or many different 13:31:02

16 market spaces, and it would be a preferred 13:31:07

17 technology, blah, blah, blah, blah, blah. 13:31:10

18 But it didn't happen that way. 13:31:13

19 After SDMI things just kind of stalled out. 13:31:14

20 There was no vast market formation until 13:31:18

21 iTunes sort of expanded to fill the space. 13:31:20

22 [REDACTED] [REDACTED] [REDACTED]

23 [REDACTED], is it your 13:31:25

24 understanding that it more or less shut down 13:31:27

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1 operations at that time?

13:31:30

2 A As far as I could tell, yes.

13:31:31

3

■

■

■

■

8 A He was just -- he was just a funny  
9 guy.

13:31:44

13:31:45

10 Q What do you mean?

13:31:46

11 A He was just a funny guy. He was  
12 just the earth-striding God from Netscape,  
13 stuff like that. Did I tell you about  
14 Netscape? Oh, sorry.

13:31:46

13:31:46

13:31:49

13:31:50

15 I always got this vibe. He  
16 was always wondering why I was bursting out  
17 laughing around him. I just got a kick out  
18 of the guy.

13:31:52

13:31:54

13:31:58

13:32:00

19 Q Okay.

13:32:01

20 Do you know a gentleman named  
21 Brett Fasullo?

13:32:02

13:32:03

22 A Oh, Fasullo, yeah, that guy, yeah,  
23 he's --

13:32:05

13:32:07

24 Q Who is Brett Fasullo?

13:32:08



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1 What do you recall about that? 13:33:13

2 A I really don't remember. I really 13:33:14

3 don't remember. It just -- you know, it was 13:33:15

4 clear that, you know, my invoices aren't 13:33:18

5 going to be answered and there was nothing 13:33:21

6 left to do, you know. 13:33:23

7 Q Okay. 13:33:24

8 [REDACTED] [REDACTED]

9 [REDACTED] [REDACTED]

10 [REDACTED] 13:33:31

11 MR. ANDERSON: Object to form. 13:33:34

12 [REDACTED] [REDACTED]

13 [REDACTED] [REDACTED]

14 [REDACTED] [REDACTED]

15 [REDACTED] 33:44

16 [REDACTED] 33:46

17 Q Yes. 13:33:49

18 After approximately spring 13:33:50

19 2001, did you stay in touch with 13:33:51

20 Mr. Moskowitz? 13:33:53

21 A Not really. 13:33:54

22 Q Did everybody just go their in 13:33:57

23 separate ways and start new businesses and 13:33:58

24 such? 13:34:01

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1	A As far as I can tell. I think Mike	13:34:02
2	actually got a new job. I think around that	13:34:04
3	time I think he communicated with us that he	13:34:06
4	had found some kind of new gig.	13:34:09

5	Q	Okay.	13:34:11
---	---	-------	----------

6	And then did you understand	13:34:12
7	that anybody who was working with	13:34:14
8	Mr. Moskowitz stayed on with Blue Spike after	13:34:16
9	that time or do you know?	13:34:19

10	A I have no idea. I know Mike needed	13:34:22
11	a new gig and Gregg might have left his name	13:34:24
12	on the masthead of the website. But as far	13:34:30
13	as I know, you know, engineering development	13:34:32
14	had stopped.	13:34:36

15	Q	Okay.	13:34:39
----	---	-------	----------

16	I think that's actually --	13:34:40
17	that's all I've got today. So I think	13:34:42
18	Mr. Anderson, who represents Blue Spike, is	13:34:44
19	going probably to ask you some follow-up	13:34:47
20	questions here.	13:34:48

21	A	Yes, sir.	13:34:49
----	---	-----------	----------

22	MR. RAMSEY: How are we all	13:34:49
23	doing energywise and tapewise?	13:34:50

24	THE VIDEOGRAPHER: We're good.	13:34:53
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1	We're fine.	13:34:54
2	MR. RAMSEY: Okay.	13:34:55
3	Kirk, that concludes the	13:34:55
4	questions I have today, so I'm going to hand	13:34:57
5	it over to you.	13:34:58
6	MR. ANDERSON: Okay, thank	13:34:59
7	you.	13:35:00
8		13:35:00
9	EXAMINATION	13:35:00
10	BY MR. ANDERSON:	13:35:00
11	Q Okay.	13:35:05
12	Mr. Cassidy, this is a little	13:35:07
13	awkward over the phone, so let me know,	13:35:09
14	please, if at any time you're not able to	13:35:12
15	hear my question or you have any --	13:35:14
16	A Is it possible to get a handset?	13:35:17
17	Because these things, I can't hear.	13:35:19
18	MR. RAMSEY: Can I just move	13:35:21
19	it closer to you? Would that help? Like, we	13:35:22
20	can probably move it right over here.	13:35:24
21	THE DEPONENT: If you can,	13:35:27
22	let's try that.	13:35:28
23	MR. RAMSEY: Yes, I think	13:35:29
24	it's --	13:35:29

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1	THE VIDEOGRAPHER: I was just	13:35:30
2	going to say, you're going to take my mike	13:35:30
3	away.	13:35:32
4	MR. RAMSEY: You know, there's	13:35:33
5	volume on this.	13:35:34
6	THE DEPONENT: Can you get an	13:35:35
7	extension with a handset? I'm much better	13:35:36
8	with that.	13:35:39
9	MR. RAMSEY: We can try.	13:35:41
10	THE VIDEOGRAPHER: I don't	13:35:43
11	know if there's -- we'd have to probably go	13:35:43
12	off the record and see if they have anything	13:35:44
13	like that.	13:35:47
14	THE DEPONENT: Because these	13:35:48
15	things are problematic for me, I've got to	13:35:49
16	tell you.	13:35:51
17	THE VIDEOGRAPHER: Is this --	13:35:52
18	are you just having trouble hearing him?	13:35:53
19	THE DEPONENT: That's just a	13:35:55
20	microphone.	13:35:56
21	THE VIDEOGRAPHER: This is	13:35:57
22	just a mike? It doesn't have any -- okay.	13:35:57
23	MR. RAMSEY: Can we go off the	13:35:59
24	record? Kirk, I think if we can orchestrate	13:36:00

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1	a way to just get this closer to you, just to	13:36:02
2	try that --	13:36:04
3	THE DEPONENT: Just to be	13:36:05
4	respectful to everyone in the process, I got	13:36:06
5	to tell you, those things I can't hear.	13:36:08
6	MR. RAMSEY: That's fine with	13:36:10
7	me.	13:36:11
8	THE VIDEOGRAPHER: So let's --	13:36:11
9	let me go off the record real quick.	13:36:11
10	MR. RAMSEY: All right. Hang	13:36:13
11	on, Kirk. We'll get it set up here soon.	13:36:13
12	MR. ANDERSON: Okay, no	13:36:20
13	problem. Sorry about that.	13:36:20
14	THE VIDEOGRAPHER: It's 1:29.	13:36:21
15	We're off the record on Tape	13:36:24
16	No. 2	13:36:24
17	(Recess.)	13:39:17
18	THE VIDEOGRAPHER: It is	13:39:31
19	1:32 p.m. We're back on the record on Tape	13:39:32
20	No. 2.	13:39:34
21	BY MR. ANDERSON:	13:39:36
22	Q Okay.	13:39:40
23	Mr. Cassidy, can you hear me	13:39:41
24	okay?	13:39:42

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1	A	Yes, sir, much better.	13:39:43
2	Q	Great.	13:39:44
3		Okay. At any time if you're	13:39:45
4		not able to hear or understand my questions,	13:39:48
5		would you please let me know?	13:39:50
6	A	Yes, sir.	13:39:51
7	Q	So I'll be following up here with	13:39:55
8		some -- with some questions, and I apologize	13:39:59
9		if any of these duplicate with what	13:40:02
10		Mr. Ramsey had asked you. In part on trim to	13:40:06
11		clarify, make sure that I was hearing	13:40:09
12		everything correctly.	13:40:11
13		So did you say that you met	13:40:12
14		Scott Moskowitz when you were considering	13:40:16
15		interviewing him?	13:40:20
16	A	Yes. I'm -- I don't when remember	13:40:23
17		exactly, but it's likely that I met Scott	13:40:27
18		Moskowitz in my work as a technical	13:40:31
19		journalist.	13:40:34
20	Q	Okay.	13:40:36
21		And did he -- did	13:40:37
22		Mr. Moskowitz then offer you a job during the	13:40:38
23		course of the conversations you had with him	13:40:41
24		about the --	13:40:44

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1	A	No, no, I don't think it happened	13:40:45
2		immediately. I think we just had	13:40:47
3		conversations about steganography, you know,	13:40:49
4		the technology. And over time, once the Blue	13:40:52
5		Spike company was coming together, he offered	13:40:56
6		me a contract relationship to them organize	13:41:00
7		product and company pitches and talk to --	13:41:08
8		and instruments to talk to investors.	13:41:09
9	Q	And when -- when Scott Moskowitz	13:41:16
10		then sent you that proposal contract, what	13:41:19
11		was it about that proposal that enticed you	13:41:24
12		to accept the job?	13:41:27
13	A	Yes, sorry, you drifted for a	13:41:30
14		second.	13:41:33
15	Q	Oh, I'm sorry. I can simplify as	13:41:33
16		well.	13:41:37
17		Can you tell me why you	13:41:38
18		accepted Scott Moskowitz's offer for	13:41:40
19		employment?	13:41:46
20	A	Why I accepted it?	13:41:46
21	Q	Yes.	13:41:48
22	A	Fascination with the technologies	13:41:49
23		that would help animate a new market space	13:41:51
24		for digital objects like music and motion	13:41:53

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1 pictures. 13:41:57

2 Q And -- at the time that Scott 13:42:04

3 Moskowitz was talking to you about 13:42:06

4 potentially coming and working for Blue 13:42:08

5 Spike, did he talk to you about the Giovanni 13:42:09

6 watermarking product? 13:42:13

7 A Did he talk about digital 13:42:15

8 watermarking products? 13:42:17

9 Q Did he talk about a specific 13:42:20

10 product, such as the Giovanni? 13:42:21

11 A Yes, he spoke about Giovanni, you 13:42:23

12 know, extensively. 13:42:26

13 Q As part of -- 13:42:29

14 A Its development, its virtues, all 13:42:29

15 that stuff, yes -- 13:42:32

16 Q Okay. 13:42:38

17 And so as part of your 13:42:39

18 employment, then who, would it be your job 13:42:42

19 responsibility or was it your job 13:42:46

20 responsibility to -- to figure out how to 13:42:48

21 market that Giovanni product? 13:42:53

22 A To figure out how to market the 13:42:55

23 Giovanni product? 13:42:56

24 Q Yes. 13:42:58



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1 A Yes.

13:44:28

2 Q And going back to something you  
3 said earlier, you talked a little bit or  
4 answered some questions about the patent  
5 work, the patent prosecution work that was  
6 going on at Blue Spike.

13:44:37

13:44:38

13:44:42

13:44:46

13:44:47

7 Did you say that -- that your

13:44:49

8 belief is that the patent prosecuting work

13:44:51

9 was intended to protect those ideas of Blue

13:44:55

10 Spike's?

13:45:00

11 A Yes. The sense I got was that the

13:45:10

12 market was forming quickly. A lot of ideas

13:45:13

13 were in the market space, and they were being

13:45:16

14 developed quickly, and that it was an

13:45:20

15 important part of the Blue Spike story that

13:45:22

16 they be able to describe how they were

13:45:26

17 protecting their innovations in helping the

13:45:28

18 market space form and execute rationally in

13:45:32

19 terms of being able to trade and manage

13:45:36

20 digital content.

13:45:41

21 Q Okay.

13:45:42

22 So is it your belief that the

13:45:45

23 patents that Blue Spike prosecuted were to

13:45:47

24 protect its technology that it would be

13:45:51



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1 attempting to put into product form? 13:45:56

2 A Yes. 13:46:04

3 And we were developing those 13:46:11

4 technologies at the time I was employed by 13:46:13

5 Blue Spike as a contractor. 13:46:17

6 Q Okay. 13:46:22

7 Now, I believe at one point 13:46:23

8 you said something about not being the expert 13:46:26

9 of experts. I just wanted to follow up on 13:46:29

10 that idea. 13:46:32

11 Would you say that you are an 13:46:33

12 expert in fingerprinting technology? 13:46:35

13 A No, no, I'm -- by trade, I'm not an 13:46:53

14 engineer, and I can't claim expertise in any 13:46:57

15 of these technologies at all. 13:47:01

16 Q Okay. 13:47:07

17 So just to be clear then, 13:47:08

18 would you say that you're an expert in 13:47:09

19 digital watermarking technology? 13:47:10

20 A No. 13:47:14

21 By trade, I am not an engineer 13:47:16

22 and can't express any claim of expertise in 13:47:17

23 any technology at all. I am, however, 13:47:26

24 familiar how these technologies can be used 13:47:31

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1 in animation of market spaces.

13:47:34

2 Q Okay.

13:47:42

3 And are you familiar with the  
4 '472 patent, Blue Spike's patent?

13:47:45

13:47:46

5 A No, really, off the top of my head.

13:47:55

6 Q Okay. And just for the record,  
7 that's US Patent 7,346,472.

13:48:00

13:48:04

8 And that is one of the patents  
9 that deals with the abstract technology, so  
10 then to the best of your recollection, you  
11 have not reviewed that patent; is that  
12 correct?

13:48:10

13:48:11

13:48:17

13:48:20

13:48:22

13 A No, I have not reviewed that  
14 patent.

13:48:28

13:48:29

15 Q Okay.

13:48:34

16 And having not reviewed that  
17 patent that discusses the abstract  
18 technology, do you feel that -- well, strike  
19 that. Let me -- let me ask a different  
20 question.

13:48:34

13:48:36

13:48:38

13:48:46

13:48:48

21 Before there were some  
22 comparisons made between fingerprinting as  
23 used in the industry and Blue Spike's  
24 abstract patent or technology.

13:48:49

13:48:50

13:48:53

13:48:56

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1 Do you feel capable of 13:49:03  
2 comparing those two technologies? 13:49:04

3 A Okay. Do you mean do I feel 13:49:14  
4 capable of comparing two technologies that 13:49:18  
5 offer different mechanisms for fingerprinting 13:49:22  
6 or abstracting a digital object? 13:49:28

7 Q Actually, my -- my question is more 13:49:35  
8 of do you feel that you are versed enough in 13:49:37  
9 Blue Spike's abstract technology to be able 13:49:42  
10 to compare or equate that with fingerprinting 13:49:46  
11 technology in general? 13:49:49

12 A Yes, if by abstract technology 13:50:03  
13 you're referring to the Giovanni digital 13:50:06  
14 watermarking system. 13:50:09

15 Q And did the Giovanni watermarking 13:50:14  
16 system use abstracting technology? 13:50:17

17 A Only inasmuch that the source data 13:50:28  
18 had to be digitally abstracted as it was 13:50:38  
19 quantized, but my appreciation of Giovanni 13:50:41  
20 is that its watermarking scheme was a 13:50:51  
21 different architectural approach than what is 13:50:54  
22 referred to as fingerprinting in this market 13:50:59  
23 space at that time. Period. 13:51:05

24 And yes, I can appreciate that 13:51:13

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1 and compare them in terms of their 13:51:16  
2 functionality in animating a market space and 13:51:18  
3 auditing it. 13:51:21

4 But again, I'm not an engineer 13:51:24  
5 by trade, so my authority is very limited. 13:51:26

6 Q Okay. 13:51:33

7 When you said that the 13:51:33  
8 Giovanni digital when watermarking machine 13:51:34  
9 would use this abstracting process, can you 13:51:39  
10 describe for me your understanding of how it 13:51:43  
11 used the abstracting process? 13:51:47

12 A Well, the abstracting process I'm 13:51:50  
13 talking about here is really reduction of an 13:51:54  
14 analogue source to digital representations. 13:51:59

15 Therefore, it's not equivalent 13:52:07  
16 to the abstracting that's referred to in this 13:52:12  
17 market space to, quote/unquote, fingerprint a 13:52:18  
18 song per se. 13:52:25

19 Q Okay. 13:52:29

20 And just to make sure I heard 13:52:30  
21 that correctly, did you say that the 13:52:32  
22 abstracting use by Blue Spike is not 13:52:34  
23 equivalent to finger-marking in the general 13:52:39  
24 marketplace? 13:52:42

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1           A       Yes. I mean, Giovanni wasn't -- as 13:52:48  
2       far as I remember in my conversations with 13:52:51  
3       Scott specifically about fingerprinting or 13:52:53  
4       about fingerprinting, it was really -- 13:52:56

5                       I mean, its essential 13:52:59  
6       innovation was the manipulation of a source 13:53:02  
7       signal as it is being quantized for digital 13:53:07  
8       instantiation in such a way to embed a code 13:53:12  
9       or information that would allow for that 13:53:19  
10      instantiation to be tracked, audited, 13:53:22  
11      identified and otherwise managed. 13:53:26

12           Q       Okay. Thank you. 13:53:34

13                       Do you still have Exhibit 63 13:53:37  
14      in front of you? 13:53:41

15           A       63? Yes, sir. 13:53:45

16           Q       Now, can you explain again to me 13:53:52  
17      what problem it is you're identifying here 13:53:58  
18      that Napster's fingerprinting is not 13:54:01  
19      addressing? 13:54:09

20                       MR. RAMSEY: Objection, form. 13:54:10

21           A       You can tell with fingerprinting 13:54:15  
22      that yes, this is a song which is known by 13:54:16  
23      this name and performed by this artist, but 13:54:29  
24      it doesn't provide the capacity to identify 13:54:36

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1	instantiation by instantiation each copy.	13:54:48
2	Or -- and this might be	13:54:58
3	overinterpreting -- the different	13:55:01
4	performances of the same song by the same	13:55:08
5	artist. Digital watermarking by its nature	13:55:10
6	gives you a lot more flexibility and	13:55:18
7	identifying each and every instantiation of a	13:55:23
8	work, and that's the larger point I was	13:55:26
9	getting to there.	13:55:29
10	Q And I believe the terminology you	13:55:33
11	used in the email is you say a version of it	13:55:36
12	even.	13:55:41
13	Is that equivalent to your	13:55:42
14	idea of instantiations?	13:55:44
15	A Yes.	13:55:51
16	Q Okay.	13:55:55
17	So an artist singing the same	13:55:56
18	song at two different venues live would be	13:55:58
19	two versions of the same song?	13:56:01
20	A Right.	13:56:02
21	Q So is it your understanding that	13:56:07
22	fingerprinting technology at the time that	13:56:09
23	you wrote this email, Exhibit 63, that	13:56:11
24	fingerprinting technology was limited in that	13:56:17

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1 it could not determine versions of a song, 13:56:19  
2 for instance? 13:56:23

3 A Perhaps. 13:56:34

4 Q Okay. 13:56:35

5 Is that not what you were 13:56:36  
6 saying when you said that digital 13:56:37  
7 watermarking is -- was maybe more appropriate 13:56:39  
8 to determining or distinguishing versions of 13:56:46  
9 a song? 13:56:51

10 MR. RAMSEY: Objection, form. 13:56:53

11 A I think what I was trying -- the 13:57:18  
12 point I was trying to make is digital 13:57:19  
13 watermarking is more appropriate for 13:57:23  
14 distinguishing versions of songs and making 13:57:25  
15 lots of other distinctions. 13:57:28

16 Q And is it more appropriate than 13:57:31  
17 fingerprinting because fingerprinting then 13:57:36  
18 was not able to distinguish those versions of 13:57:37  
19 songs? 13:57:41

20 A Right. That was the point. 13:57:45  
21 Digital watermarking by its nature gives you 13:57:48  
22 a lot more flexibility in marking things. 13:57:52

23 Q Okay. Thank you. 13:57:58

24 I believe you said the digital 13:58:00

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1	watermarking was -- was more helpful than	13:58:03
2	fingerprints at the time because it could	13:58:07
3	distinguish versions, and then you said and	13:58:09
4	it could make other distinctions.	13:58:11

5	Can you tell me about those	13:58:13
6	other distinctions?	13:58:15

7	A	Any distinctions you want to encode	13:58:16
8		into the markings that you embed into the	13:58:19
9		code -- into the source file, into the -- the	13:58:22
10		digital object, it's up to you.	13:58:25

11	You can use it like a bar	13:58:29
12	code. You can use it like version control.	13:58:30
13	You can use it like a Social Security number	13:58:33
14	if you want to identify the person who bought	13:58:38
15	that particular copy.	13:58:41

16	It's got all the flexibility	13:58:43
17	of any marking system you can imagine,	13:58:45
18	because every iteration can have a different	13:58:48
19	mark embedded into it.	13:58:51

20	By definition, fingerprinting	13:58:53
21	will just tell you what the object is a copy	13:58:55
22	of, not associated specifically with an	13:58:59
23	event, a person or an agency, per se.	13:59:04

24	Q	Okay. Thank you.	13:59:06
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24	Q	Okay. Thank you.	13:59:06
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1 Mr. Cassidy, those are all the 13:59:15

2 questions that I have. 13:59:17

3 A Yes, sir. 13:59:17

4 Q I appreciate you bearing with me 13:59:18

5 over the phone here. 13:59:19

6 A Thank you, sir. 13:59:21

7 MR. RAMSEY: Okay, great. I 13:59:22

8 think that's it. Thank you for your time 13:59:23

9 today. Appreciate it. 13:59:25

10 THE DEPONENT: Okay. 13:59:26

11 THE VIDEOGRAPHER: It is 13:59:28

12 1:52 p.m. We're going off the record on Tape 13:59:29

13 No. 2, end of this deposition. 13:59:32

14 (Proceedings adjourned.) 13:59:34

15 13:59:34

16

17

18

19

20

21

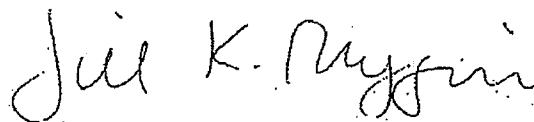
22

23

24

C E R T I F I C A T E

I, Jill K. Ruggieri, Registered Merit Reporter and Certified Realtime Reporter, do certify that the deposition of PETER CASSIDY, in the above-captioned matter, on April 1, 2015, was stenographically recorded by me; that the witness provided satisfactory evidence of identification, as prescribed by Executive Order 455 (03-13) issued by the Governor of the Commonwealth of Massachusetts, before being sworn by me, a Notary Public in and for the Commonwealth of Massachusetts; that the transcript produced by me is a true record and accurate record of the proceedings to the best of my ability; that I am neither counsel for, related to, nor employed by any of the parties to the above action; and further that I am not a relative or employee of any attorney or counsel employed by the parties thereto, nor financially or otherwise interested in the outcome of the action.



Jill K. Ruggieri, RPR, RMR, FCRR, CRR

Transcript review was requested of the reporter.

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1 WITNESS: PETER CASSIDY

2

3 SIGNATURE PAGE/ERRATA SHEET

4

5 PAGE LINE CHANGE OR CORRECTION AND REASON

6 \_\_\_\_\_

7 \_\_\_\_\_

8 \_\_\_\_\_

9 \_\_\_\_\_

10 \_\_\_\_\_

11 \_\_\_\_\_

12 \_\_\_\_\_

13 I have read the transcript of my deposition taken  
14 on April 1, 2015. Except for any  
15 corrections or changes noted above, I hereby  
subscribe to the transcript as an accurate record  
of the statements made by me.

16 Signed under the pains and penalties of perjury.  
17 Deponent: \_\_\_\_\_ /\_\_\_\_/2015  
PETER CASSIDY

18 On this \_\_\_\_ day of \_\_\_\_\_, 201\_\_\_\_, before me,  
19 the undersigned notary public, personally appeared  
PETER CASSIDY, who presented satisfactory  
evidence of identification, to wit,  
20 \_\_\_\_\_, and signed this document in my  
presence.

21 \_\_\_\_\_  
22 Notary Public in and for \_\_\_\_\_  
My commission expires \_\_\_\_\_

23

24

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April 17, 2015

Peter Cassidy  
c/o Kirk Anderson  
Garteiser Honea  
218 N. College Avenue  
Tyler, Texas 75702

***In re: Spike v. Texas Instruments, et al.***

Dear Mr. Cassidy:

Please be advised that the original transcript of your deposition taken on April 1, 2015 in the above-entitled matter is available for reading and signing. The original will be held at the offices of:

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(415)357-4300

for thirty (30) days in accordance with Federal Rules of Civil Procedure Section 30 (e). If you do not sign your deposition within 30 days from the date of this letter, it may be used as fully as though signed.

If you are represented by counsel in this matter, you may wish to ask your attorney how to proceed. If you are not represented by counsel and wish to review your transcript, please contact our office for a mutually convenient appointment to review your deposition.

Thank you for your cooperation in this matter.

Very truly yours,

Client Services  
Merrill Corporation, San Francisco

cc: Original transcript  
All Counsel

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**In The Matter Of:**

*BLUE SPIKE, LLC*

*v.*

*TEXAS INSTRUMENTS, et al.*

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*MICHAEL W. BERRY - Vol. 1*

*February 10, 2015*

---

***CONFIDENTIAL***  
***UNDER THE PROTECTIVE ORDER***

**MERRILL CORPORATION**

**LegalLink, Inc.**

27 Maiden Lane  
Suite 300  
San Francisco, CA 94108  
Phone: 415.357.4300  
Fax: 415.357.4301

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS

BLUE SPIKE, LLC,  
Plaintiffs,  
vs.  
TEXAS INSTRUMENTS, et al.,  
Defendants.

VIDEOTAPED DEPOSITION UPON ORAL EXAMINATION  
OF:  
MICHAEL W. BERRY

1221 2nd Avenue, Suite 500  
Seattle, Washington

\* \* \* \* \*

CONFIDENTIAL - UNDER THE PROTECTIVE ORDER

DATE: February 10, 2015

REPORTED BY: Tia Reidt  
CCR #2798, RPR

SF-021137

CONFIDENTIAL - UNDER THE PROTECTIVE ORDER  
MICHAEL W. BERRY - 2/10/2015

Page 2

1 APPEARANCES

2

3 On behalf of the Plaintiff Blue Spike:

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5 RANDALL GARTEISER

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7 Tyler, TX 75702

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9 RGarteiser@GHIPLaw.com

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16 (415) 773-5535

17 GRamsey@Orrick.com

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19 On behalf of the Defendant CBS Interactive and Last.fm:

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21 ANDREW L. PERITO

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CONFIDENTIAL - UNDER THE PROTECTIVE ORDER  
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Page 3

1 APPEARANCES CONTINUED

2

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11 On behalf of the third-party witness:

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CONFIDENTIAL - UNDER THE PROTECTIVE ORDER  
MICHAEL W. BERRY - 2/10/2015

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1 APPEARANCES CONTINUED

2

3 On behalf of the Defendant Morpho Trust USA, L-1 Identity  
4 Solutions, Morpho Track, Inc., and Safran USA

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8 3000 El Camino Real, Suite 700

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10 (650) 843-7240

11 LShinn@MorganLewis.com

12

13 ALSO PRESENT:

14

15 NICK MARTINI,

16 Adobe inhouse counsel

17

18 NICHOLAS RAPP,

19 Videographer

20

21

22

23

24

25



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9 Mr. Garteiser 138

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15 Computer Vision for Music

16 Identification.

17 EXHIBIT 41 Computer Vision for Music 97

18 Identification Abstract.

19 EXHIBIT 42 E-mail re: Pricing for SDMI and 131

20 Sony.

21

22

23

24

25

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MICHAEL W. BERRY - 2/10/2015

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1 SEATTLE, WASHINGTON, TUESDAY FEBRUARY 10, 2015

2 10:00 A.M.

3

4 \* \* \* \* \*

5

10:02:51

6

THE VIDEOGRAPHER: Here begins Volume I,

10:02:51

7

Videotape No. 1 in the deposition of Michael Berry, in

10:02:55

8

the matter of Blue Spike, LLC versus Texas Instruments

10:02:57

9

in the US District Court for the Eastern District of

10:03:02

10

Texas, Case No. 6:12-cv-576 MHS.

10:03:06

11

Today's date is February 10th, 2015. The

10:03:14

12

time on the video monitor is 10:03 a.m. The video

10:03:19

13

operator today is Nick Rapp, contracted by Merrill

10:03:24

14

Corporation.

10:03:27

15

The video deposition is taking place at 1221

10:03:28

16

2nd Avenue, Suite 500, Seattle, Washington 98101.

10:03:33

17

Counsel, please identify yourselves and state

10:03:37

18

whom you represent.

10:03:41

19

MR. RAMSEY: This is Gabriel Ramsey with

10:03:43

20

Orrick, Herrington & Sutcliffe for Audible Magic

10:03:48

21

Corporation and its customers.

10:03:49

22

MR. PERITO: Andrew Perito from Weil, Gotshal

10:03:50

23

& Manges on behalf of CBS Interactive, Inc., and

10:03:55

24

Last.fm, Limited.

10:03:59

25

MR. MAR: Eugene Mar from Farella, Braun &

10:04:00

CONFIDENTIAL - UNDER THE PROTECTIVE ORDER  
MICHAEL W. BERRY - 2/10/2015

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1 Martel on behalf of Adobe Systems. 10:04:05

2 MS. SHINN: Lindsey Shinn from Morgan, Lewis 10:04:10

3 & Brockius for Morpho Trust, USA, LLC, L-1 Identity 10:04:12

4 Solutions, Inc., Morpho Track, Inc., and Safran USA. 10:04:18

5 MR. GARTEISER: Randall Garteiser on behalf 10:04:20

6 of Blue Spike, the plaintiff. 10:04:24

7 MR. SCOTT: Michael Scott on behalf of the 10:04:27

8 witness, Mike Berry. 10:04:29

9 MR. LANSVERK: Eric Lansverk with Hillis, 10:04:30

10 Clark, Martin & Peterson on behalf of the witness, Mike 10:04:32

11 Berry. 10:04:34

12 THE VIDEOGRAPHER: The court reporter today 10:04:40

13 is Tia Reidt of Merrill Corporation. 10:04:41

14 Would the reporter please swear in the 10:04:45

15 witness. 10:04:47

16 10:04:48

17 MICHAEL W. BERRY, having been first duly sworn

18 by the Notary, deposed as  
19 follows:

20

21

22 MR. RAMSEY: All right.

23 MR. MAR: As we begin, this is Eugene Mar for 10:04:59

24 Adobe. 10:04:59

25 I just want to get it onto the record that in 10:05:03

the case between Blue Spike and Adobe pending in the 10:05:05

CONFIDENTIAL - UNDER THE PROTECTIVE ORDER  
MICHAEL W. BERRY - 2/10/2015

Page 8

1 Northern District of California, we have a standing in 10:05:10  
2 place in the court, a standing on all discovery as to 10:05:14  
3 Adobe and its products and its technologies, so we 10:05:15  
4 would ask the parties today to refrain from asking any 10:05:18  
5 questions to Mr. Berry pertaining to work at Adobe or 10:05:19  
6 any of its products or any of its technologies. 10:05:24

7 If that presents a problem for anyone, I 10:05:27  
8 would ask that you speak to me offline, and if need to, 10:05:28  
9 we can get guidance from the Court. 10:05:31

10 But to be clear, from Adobe's perspective, 10:05:34  
11 Mr. Berry is free to speak about his role as a 10:05:35  
12 coinventor on the asserted patents and any other work 10:05:37  
13 he has done and any knowledge he has outside of what he 10:05:41  
14 does at Adobe and any of their products. 10:05:43

15 MR. GARTEISER: As a brief followup, this is 10:05:49  
16 Randall Garteiser on behalf of Blue Spike. Blue Spike 10:05:51  
17 has actually voluntarily moved to dismiss Adobe, so 10:05:53  
18 Adobe is no longer a defendant in this action, or is on 10:06:00  
19 the way to not be. 10:06:06

20 10:06:06

21 EXAMINATION 10:06:06

22 BY MR. RAMSEY: 10:06:06

23 Q. Okay. All right. Good morning, Mr. Berry. 10:06:08

24 I'm Gabe Ramsey. 10:06:12

25 Your counsel has probably already given you 10:06:14

Pages 9-154 Redacted

CONFIDENTIAL - UNDER THE PROTECTIVE ORDER  
MICHAEL W. BERRY - 2/10/2015

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1	MR. MAR: No.	
2	THE COURT REPORTER: Copy?	
3	MR. LANSVERK: We just -- he just needs to	04:10:17
4	read it. We'll reserve.	04:10:20
5	THE COURT REPORTER: Okay. Do you want a	04:10:20
6	copy of the transcript?	04:10:20
7	MR. LANSVERK: I don't need a copy. He just	04:10:20
8	needs to read it.	04:10:20
9	THE COURT REPORTER: Okay. Copy?	04:10:21
10	MR. GARTEISER: No, I'm okay.	04:10:24
11	(Whereupon, the deposition of MICHAEL W.	04:10:25
12	BERRY was concluded at 4:10 p.m.)	04:10:25
13	(Signature reserved.)	04:10:42
14	MR. GARTEISER: Actually, I do need a copy.	04:10:42
15	THE COURT REPORTER: Okay. Thank you.	
16	---	
17		
18		
19		
20		
21		
22		
23		
24		
25		

C E R T I F I C A T E

STATE OF WASHINGTON )  
 ) ss  
COUNTY OF KING )

I, the undersigned officer of the Court, under my commission as a Notary Public in and for the State of Washington, hereby certify that the foregoing deposition upon oral examination of the witness named herein was taken stenographically before me and thereafter transcribed under my direction;

That the witness before the examination was first duly sworn by me to testify truthfully; that the transcript of the deposition is a full, true and correct transcript of the testimony, including questions and answers and all objections, motions, and exceptions of counsel made and taken at the time of the foregoing examination;

That I am neither attorney for nor a relative or employee of any of the parties to the action; further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially interested in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this      day of      , 2015.



Tia B. Reidt  
Tia B. Reidt

NOTARY PUBLIC in and for  
the State of Washington,  
residing in King County.  
My commission expires 6-3-18.

# MERRILL CORPORATION



Legalink, Inc.

27 Maiden Lane, Suite 300  
San Francisco, CA 94108 • (415) 357-4300

February 20, 2015

Michael Berry  
c/o Eric Lansverk  
Hillis, Clark, Martin & Peterson  
1221 2<sup>nd</sup> Avenue, Suite 500  
Seattle, WA 98101

***In re: Spike v. Texas Instruments, et al.***

Dear Mr. Berry:

Please be advised that the original transcript of your deposition taken on February 10, 2015 in the above-entitled matter is available for reading and signing. The original will be held at the offices of:

Merrill Corporation  
27 Maiden Lane, Suite 300  
San Francisco, California 94108  
(415)357-4300

for thirty (30) days in accordance with Federal Rules of Civil Procedure Section 30 (e). If you do not sign your deposition within 30 days from the date of this letter, it may be used as fully as though signed.

If you are represented by counsel in this matter, you may wish to ask your attorney how to proceed. If you are not represented by counsel and wish to review your transcript, please contact our office for a mutually convenient appointment to review your deposition.

Thank you for your cooperation in this matter.

Very truly yours,

Client Services  
Merrill Corporation, San Francisco

cc: Original transcript  
All Counsel



SF-021137 – Witness: Michael W. Berry – February 10, 2015  
Spike v. Texas Instruments, et al.

## Merrill Legal Solutions



### INSTRUCTIONS FOR READING/CORRECTING YOUR DEPOSITION

To assist you in making changes and /or corrections to your deposition testimony, please follow the directions below. If additional pages are necessary, please furnish them and attach the pages to the back of the errata sheet.

Please read your transcript carefully. If you find any errors or changes you wish to make, insert the changes and/or corrections on the errata sheet by listing the page and the line number reference and then the change you wish to make.

Please do not make any changes and /or corrections on the face of the transcript.

Please do NOT change any of the questions.

After completing your review, please sign the last page of the errata sheet, above the designated "Signature."

### ERRATA SHEET

Page    Line

\_\_\_\_\_    \_\_\_\_\_    Change: \_\_\_\_\_

Reason: \_\_\_\_\_

\_\_\_\_\_    \_\_\_\_\_    Change: \_\_\_\_\_

Reason: \_\_\_\_\_

\_\_\_\_\_    \_\_\_\_\_    Change: \_\_\_\_\_

Reason: \_\_\_\_\_

Page    Line

SF-021137 – Witness: Michael W. Berry – February 10, 2015

Spike v. Texas Instruments, et al.

_____	_____	Change: _____
		Reason: _____
_____	_____	Change: _____
		Reason: _____
_____	_____	Change: _____
		Reason: _____
_____	_____	Change: _____
		Reason: _____
_____	_____	Change: _____
		Reason: _____
_____	_____	Change: _____
		Reason: _____

\_\_\_\_\_ Subject to the above changes, I certify that the transcript is true and correct.

\_\_\_\_\_ No changes have been made. I certify that the transcript is true and correct.

\_\_\_\_\_  
(signature)

\_\_\_\_\_  
(date)

**In The Matter Of:**

*BLUE SPIKE, LLC*

*v.*

*TEXAS INSTRUMENTS INC.*

---

*MATT INGALLS - Vol. 1*

*July 16, 2014*

---

**CONFIDENTIAL - OUTSIDE COUNSEL ONLY**

**MERRILL CORPORATION**

**LegalLink, Inc.**

135 Main Street  
4th Floor  
San Francisco, CA 94105  
Phone: 415.357.4300  
Fax: 415.357.4301

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

--o0o--

BLUE SPIKE, LLC,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No.
	)	6:12-CV-499-MHS
TEXAS INSTRUMENTS INC.,	)	
	)	
Defendants.	)	
	)	
_____	)	
	)	
BLUE SPIKE, LLC,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Civil Action No.
	)	6:12-CV-576-MHS
AUDIBLE MAGIC CORPORATION,	)	
ET AL.,	)	(Consolidated with
	)	6:12-CV-499)
Defendants.	)	
	)	
_____	)	

CONFIDENTIAL OUTSIDE COUNSEL ONLY

DEPOSITION OF MATT INGALLS

San Francisco, California

Wednesday, July 16th, 2014

10:03 a.m.

Reported by: Terri D. Kinser, CSR No. 4393 (SF-003538)

CONFIDENTIAL - OUTSIDE COUNSEL ONLY  
MATT INGALLS - 7/16/2014

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MATT INGALLS - 7/16/2014

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A P P E A R A N C E S

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By: GABRIEL M. RAMSEY, Esq.

For the Witness:

KAO SWOPE, LLP  
268 Bush Street, Suite 4127  
San Francisco, California 94104-3503  
By: RICHARD S. SWOPE, Esq.

Also Present:

LARRY COSSAR, Videographer

WHITNEY MINER

--oOo--

CONFIDENTIAL - OUTSIDE COUNSEL ONLY  
MATT INGALLS - 7/16/2014

Page 4

1	THE VIDEOGRAPHER: Here begins Video Number 1 in	10:02:30
2	the Deposition of Matt Ingalls in the matter of Blue	10:02:31
3	Spike, LLC versus Audible Magic Corporation, in the U.S.	10:02:34
4	District Court, Eastern District of Texas, Tyler	10:02:39
5	Division. Case number -- I'm sorry. I didn't get that.	10:02:42
6	My bad. 6:12-CV-499-MSH.	10:02:50
7	Today's date is July 16th, 2014. The time on the	10:02:59
8	video monitor is 10:03 a.m. Today's date is July 16th,	10:03:06
9	2014. The video operator today is Larry Cossar. The	10:03:10
10	deposition is taking place at Orrick Herrington Sutcliffe	10:03:16
11	in San Francisco.	10:03:22
12	Counsel, please voice identify yourselves and state	10:03:25
13	whom you represent.	10:03:25
14	MR. RAMSEY: This is Gabriel Ramsey, with	10:03:26
15	Orrick, Herrington & Sutcliffe for Audible Magic	10:03:28
16	Corporation and its customers.	10:03:33
17	MR. SWOPE: Richard Swope with Cao & Swope,	10:03:33
18	representing Matt Ingalls.	10:03:36
19	MR. HONEA: Christopher Honea, representing Blue	10:03:37
20	Spike, Inc.	10:03:41
21	THE VIDEOGRAPHER: The court reporter today is	10:03:42
22	Terri Kinser of Merrill Corporation.	10:03:43
23	Would the reporter please swear in the witness?	10:03:46
24	THE REPORTER: Yes.	
25	///	///

Pages 5-73 Redacted



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MATT INGALLS - 7/16/2014

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1 MR. HONEA: Yes, please. 12:25:24

2 THE REPORTER: Do you want both? 12:25:30

3 MR. HONEA: Yes, please.

4 THE REPORTER: Okay. Mr. Swope, would you like 12:25:31

5 a copy of the deposition? 12:27:25

6 MR. SWOPE: No, I don't need a copy. 12:27:28

7 THE REPORTER: Okay. Thank you. 12:27:32

8

9 (The deposition concluded at 12:24 p.m.)

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CERTIFICATE OF REPORTER

I, TERRI D. KINSER, a Certified Shorthand Reporter, hereby certify that the witness in the foregoing deposition was by me duly sworn to tell the truth in the within-entitled cause;

That said deposition was taken down in shorthand by me, a disinterested person, at the time and place therein stated, and that the testimony of the said witness was thereafter reduced to typewriting by computer, under my direction and supervision;

I further certify that I am not of counsel or attorney for either or any of the parties to the said deposition, nor in any way interested in the event of this cause, and that I am not related to any of the parties thereto.

DATED:

July 23, 2014

T. D. Kinser

TERRI D. KINSER, CSR No. 4393

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Page 1

1  
2 C O N F I D E N T I A L  
3 IN THE UNITED STATES DISTRICT COURT  
4 FOR THE EASTERN DISTRICT OF TEXAS  
5 TYLER DIVISION  
-----

6 BLUE SPIKE, LLC,

7 Plaintiff,

8 -against-

9 TEXAS INSTRUMENTS, INC.,

10 Defendant.  
-----

11 BLUE SPIKE, LLC,

12 Plaintiff,

13 -against-

14 AUDIBLE MAGIC CORPORATION, FACEBOOK,  
15 INC., MYSPACE, LLC, SPECIFIC MEDIA,  
16 LLC, PHOTOBUCKET.COM, INC.,  
17 DAILYMOTION, INC., DAILYMOTION S.A.,  
18 SOUNDCLOUD, INC., SOUNDCLOUD LTD.,  
19 MYXER, INC., QLIPSO, INC., QLIPSO  
20 MEDIA NETWORKS LTD., YAP.TV, INC.,  
21 GOMISO, INC., IMESH, INC., METACAFE,  
22 INC., BOODABEE TECHNOLOGIES INC.,  
23 TUNECORE, INC., ZEDGE HOLDINGS,  
24 INC., BRIGHTCOVE INC.,  
25 COINCIDENT.TV, INC., ACCEDO  
BROADBAND NORTH AMERICA, INC.,  
ACCEDO BROADBAND AB, and MEDIAFIRE,  
LLC,

Defendants.  
-----

December 12, 2014  
GREGG MOSKOWITZ

Job No. 87617

Case No.  
6:12-cv-  
00499-MHS  
(Lead Case)

Case No.  
6:12-cv-  
00576-MHS  
(Consoli-  
dated)

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Page 2

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December 12, 2014

5:19 p.m.

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Deposition of GREGG MOSKOWITZ, taken by

7

Defendants, pursuant to Subpoena, held at

8

830 Third Avenue, New York, New York, before

9

Joseph R. Danyo, a Shorthand Reporter and

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Notary Public within and for the State of New

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York.

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Page 3

A P P E A R A N C E S :

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A P P E A R A N C E S : (Continued)

Also Present:

MATT SMITH,  
Videographer

oOo

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1 Moskowitz - Confidential

2 THE VIDEOGRAPHER: This begins tape  
3 labeled number 1 of the videotaped  
4 deposition of Gregg Moskowitz in the  
5 matter of Blue Spike, LLC versus Texas  
6 Instruments, Incorporated, et al., in the  
7 United States District Court for the  
8 Eastern District of Texas, Tyler Division.

9 This deposition is being held at 830  
10 Third Avenue, New York, New York, on  
11 December 12, 2014 at approximately 5:19  
12 p.m.

13 My name is Matthew Smith for TSG  
14 Reporting, Inc. I am the legal video  
15 specialist. The court reporter is Joe  
16 Danyo in association with TSG Reporting.

17 Would counsel please introduce  
18 themselves for the record.

19 MR. RAMSEY: This is Gabriel Ramsey  
20 with the law firm of Orrick Herrington &  
21 Sutcliffe along with my colleagues Chris  
22 Higgins and Alyssa Caridis on behalf of  
23 Audible Magic and its customers.

24 MR. GOLDSTEIN: My name is Jerry  
25 Goldstein. I represent Blue Spike, and I

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1 Moskowitz - Confidential  
2 am here in the limited capacity of  
3 representing Mr. Moskowitz as to  
4 objections and any questions he may have  
5 regarding this deposition.

6 MR. RAMSEY: Very good.

7 EXAMINATION BY MR. RAMSEY:

8 Q. Please state --

9 THE VIDEOGRAPHER: Would the court  
10 reporter please swear in the witness.

11 G R E G G M O S K O W I T Z, having been first  
12 duly sworn by Joseph R. Danyo, a Notary Public  
13 for the State of New York, was examined and  
14 testified as follows:

15 EXAMINATION BY MR. RAMSEY:

16 Q. Could you please state your full name  
17 for the record.

18 A. Gregg Moskowitz.

19 Q. Have you been deposed before in your  
20 life?

21 A. Never.

22 Q. Just quickly the overview of the  
23 process, I will ask questions and please try to  
24 give me as good answers as you can based on your  
25 recollection. The most important thing by far is



1 Moskowitz - Confidential

2 that we should try to -- you should try to let me  
3 finish my questions before you begin speaking,  
4 and I should let you finish your answers, please  
5 remind me, before I start a new question, because  
6 it is hard to take down at the same time.

7 So at some point in history did you  
8 have involvement with a company called Blue  
9 Spike, Inc.?

10 A. Yes.

11 Q. Please describe for me when you first  
12 became involved with Blue Spike, Inc.

13 A. Approximately 1998. I joined my  
14 brother.

15 Q. What was your role when you first  
16 became involved with Blue Spike in '98?

17 A. My role was CFO where I was  
18 responsible for writing the business plan and  
19 raising capital.

20 Q. How long did you have a formal role  
21 with Blue Spike, Inc. after 1998?

22 A. Formally through approximately 2001.

23 Q. Did you have a formal title with Blue  
24 Spike, Inc. between 1998 and 2001?

25 A. Yes, it was business development

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1 Moskowitz - Confidential

2 slash -- you know, probably mostly business

3 development just because there was no CFO title.

4 Q. Did you carry out CFO-type functions?

5 A. Yes.

6 Q. What was in general the business of  
7 Blue Spike, Inc. between 1998 and 2001?

8 A. It was a digital watermarking  
9 company.

10 Q. Other than digital watermark  
11 products, did Blue Spike ever develop between  
12 1998 and 2001 any other type of product?

13 A. Everything that I can recall was  
14 related to the digital watermarking product.

15 Q. Did Blue Spike, Inc. ever develop a  
16 digital fingerprinting technology between 1998  
17 and 2001?

18 A. I don't recall.

19 Q. Do you recall any conversations at  
20 Blue Spike between '98 and 2001 about digital  
21 fingerprinting technologies?

22 A. You know, digital watermarking,  
23 digital fingerprinting, I'm not a technologist,  
24 so...

25 Q. Do you know what I mean when I say

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1 Moskowitz - Confidential

2 digital fingerprinting?

3 A. No.

4 Q. When I say digital fingerprinting, I  
5 am talking about a kind of technology that  
6 analyzes a piece of content and creates some sort  
7 of representation of that content so they can be  
8 looked up in a database later.

9 A. Digitized information. That is  
10 called digital watermarking, to my knowledge.

11 Q. Okay. So do you know what this case  
12 is about, Blue Spike versus Texas Instruments?

13 A. I do not.

14 Q. This case has to do with technology  
15 that looks at a signal and extracts features from  
16 the signal and then creates a representation of  
17 the signal.

18 A. Um-hum.

19 Q. So I am going to use that as a  
20 definition of a digital fingerprint. Is that  
21 okay?

22 A. That is okay.

23 MR. GOLDSTEIN: Objection as to form  
24 and that we don't necessarily agree with  
25 that definition.

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2 Q. Do you remember ever contemplating  
3 Blue Spike working with any company that created  
4 a digital fingerprint technology as I have  
5 defined it?

6 A. Not that I recall.

7 Q. Do you remember ever talking about a  
8 company called [REDACTED]?

9 A. No.

10 Q. Do you ever remember talking to a  
11 company called [REDACTED]?

12 A. I don't recall.

13 Q. Do you ever recall talking about a  
14 company called [REDACTED]?

15 A. I don't recall.

16 Q. Do you recall anything about Blue  
17 Spike, Inc.'s business relating to content  
18 monitoring?

19 A. Again, I wasn't in the technology  
20 space, I was more of the CFO, so I was not a  
21 technologist. So I don't recall.

22 Q. When you were out doing business  
23 development on behalf of Blue Spike during 1998  
24 and 2001, please name for me the companies that  
25 you remember that you were attempting to engage

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1 Moskowitz - Confidential

2 in business development?

3 A. Most of them were the [REDACTED]  
4 [REDACTED]. That  
5 is primarily what my contact was with other  
6 companies.

7 Q. [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED] get  
12 from [REDACTED]

13 [REDACTED] and  
14 they were going through a lot of testing of the  
15 technology.

16 Q. Were you involved in any  
17 standard-setting process relating to digital  
18 watermarking?

19 A. Yes. SDMI I think it was referred to  
20 as.

21 Q. What is SDMI?

22 A. Signal Digital, I don't even recall.  
23 SDMI. It has been a while. They were trying to  
24 find -- they were trying to find a standard for  
25 identifying content over the -- digitized content

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1 Moskowitz - Confidential

2 over the Internet.

3 Q. Was Blue Spike's watermarking

4 technology under consideration to become a

5 standard within the SDMI process?

6 A. Yes.

7 Q. And was Blue Spike's digital

8 watermarking technology ultimately adopted as a

9 standard by SDMI?

10 A. I don't recall. I don't know if SDMI

11 ever finalized that approach.

12 Q. What happened with regard to the SDMI

13 process as it relates to Blue Spike?

14 A. I just remember we were in those

15 meetings for quite some time. I don't think they

16 ever came to a final decision on a technology.

17 Q. Is it fair to say that the SDMI

18 standard-setting process failed?

19 A. I don't recall.

20 Q. Did Blue Spike make a decision not to

21 continue participating in the SDMI process?

22 A. At a time we did, but I don't recall

23 if we went back into it as well.

24 Q. What do you mean?

25 A. In other words, I don't recall if we

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2 pulled out for good or if it was just  
3 temporarily, and then they were still monitoring  
4 our technology.

5 Q. Do you remember a moment in the  
6 history of the SDMI process when there were  
7 hacking tests against various watermarking  
8 technologies?

9 A. Yes, I do.

10 Q. Describe for me your recollection of  
11 that.

12 A. Just that. Again, I'm not a  
13 technologist, so all I recall, I just know that  
14 they asked for technology, and they put it  
15 through a bunch of testing to determine what was  
16 the best technology, and again, to my  
17 recollection, I don't know if they ever made a  
18 decision on that. I don't think that went  
19 anywhere.

20 Q. Do you recall what happened as a  
21 result of the hacking tests that we just  
22 mentioned?

23 A. I do not.

24 Q. Do you remember any other digital  
25 watermarking standard-setting processes that Blue

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1 Moskowitz - Confidential

2 Spike was involved with?

3 A. I don't recall.

4 Q. Do you remember something called [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

10 Q. [REDACTED]

[REDACTED]

[REDACTED]

13 A. I don't recall.

14 Q. Back to content companies. What  
15 content companies do you recall that you  
16 interacted with on behalf of Blue Spike?

17 A. Universal, Sony. Who else? BMG.

18 Q. Describe for me your recollection of  
19 interactions with Universal.

20 A. Just it was more for prepackaged --  
21 it was for pre-releases where we were hoping that  
22 they would incorporate our technology into their  
23 pre-release agenda, which is when music was  
24 released, you can identify that content.

25 Q. To be precise, you were contemplating



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1 Moskowitz - Confidential  
2 using Blue Spike's digital watermarking  
3 technology with respect to [REDACTED]

4 MR. GOLDSTEIN: Objection as to form.  
5 You can answer.

6 THE WITNESS: I'm sorry?

7 MR. GOLDSTEIN: You can answer.

8 Q. He is going to object to the form  
9 because sometimes my questions are not  
10 understandable.

11 A. I understand. Can you repeat that  
12 question. I'm sorry.

13 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

21 Q. Do you recall ever interacting with  
22 an individual named [REDACTED]

23 A. I don't recall.

24 Q. Do you ever recall interacting with  
25 anybody regarding the company Napster?

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2 A. I don't recall anybody -- dealing  
3 with anyone at Napster.

4 Q. Was Blue Spike attempting to do any  
5 sort of content monitoring as part of its  
6 business between '98 and 2001?

7 A. I think so.

8 Q. Describe for me the nature of Blue  
9 Spike's content monitoring efforts.

10 A. It really never -- again most of the  
11 technology that we were -- it didn't go very far  
12 at that time while I was there, so I don't recall  
13 exactly what was going on between the content  
14 monitoring or the digital watermarking.

15 Q. What do you mean the technology  
16 didn't go very far?

17 A. When I was there in terms of there  
18 were no -- let me rephrase. I wasn't really  
19 involved in the technology per se, so it is hard  
20 for me to comment on what technology was provided  
21 to certain companies. I just remember what I was  
22 in charge of.

23 Q. Okay. In terms of business  
24 development activities, did you ever have content  
25 monitoring technology that was fully developed

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2 and sold?

3 A. I don't recall that.

4 Q. What did you understand Blue Spike's  
5 content monitoring efforts to be?

6 A. Again, I'm not a technologist, and  
7 most of my responsibilities were again on the  
8 finance side, the CFO level, capital-raising, and  
9 then I did a lot with the music houses for their  
10 pre-releases.

11 Q. Right. Just from a business point of  
12 view, notwithstanding technology, how did you  
13 understand content monitoring to fit into Blue  
14 Spike's business?

15 MR. GOLDSTEIN: Objection as to form.

16 A. Just that it was, the digital signal  
17 processing identified digital material as it  
18 found its way into the Internet.

19 Q. Did you ever talk with any of the  
20 technologists at Blue Spike regarding content  
21 monitoring technology?

22 A. No.

23 Q. Did there ever come a point in time  
24 when you considered Blue Spike partnering with  
25 other technology companies?

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2 A. I don't recall.

3 Q. Do you recall interacting with a  
4 company called MuscleFish?

5 A. I don't recall.

6 Q. Do you recall anything about a  
7 company called MuscleFish?

8 A. I don't recall.

9 Q. Were you ever involved in any patent  
10 activities of Blue Spike, Inc.?

11 A. No.

12 Q. Did you ever -- were you ever  
13 involved in patent prosecution, for example?

14 A. No.

15 Q. Were you ever involved in patent  
16 monetization activities at Blue Spike, Inc.?

17 A. No.

18 Q. Are you presently an investor in Blue  
19 Spike, LLC?

20 A. No.

21 Q. Are you in any way involved in this  
22 litigation other than your deposition today?

23 A. No.

24 Q. I will just ask do you stand to have  
25 any financial gain from the outcome of Blue

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2 Spike, LLC versus Audible Magic?

3 A. I have no idea.

4 Q. Your brother is Scott Moskowitz?

5 A. He is.

6 Q. I will represent to you that Mr.  
7 Moskowitz indicated that he talked with you some  
8 months before this lawsuit was filed about it.  
9 Do you recall that?

10 A. There has been many litigations that  
11 my brother has discussed, but not in great  
12 detail.

13 Q. Okay. What do you recall about the  
14 conversation with your brother regarding this  
15 litigation?

16 A. Not much.

17 Q. Do you recall anything?

18 A. No.

19 MR. RAMSEY: Could we mark an  
20 exhibit. We will start with Exhibit 19.

21 (Exhibit 19, e-mail exchange between  
22 [REDACTED], was so marked  
23 for identification, as of this date.)

24 Q. All right. You have been handed a  
25 document labeled Exhibit 19.

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2 A. Um-hum.

3 Q. It is an e-mail exchange between  
4 Scott Moskowitz and somebody called [REDACTED], and  
5 you are copied on the e-mail exchange.

6 A. Okay.

7 Q. Do you recognize this e-mail at all?

8 A. I do not.

9 Q. I am going to ask you to look about  
10 halfway down the first page of Exhibit 19.

11 A. Okay.

12 Q. There is a reference to the word  
13 "signal abstract." Do you see that?

14 A. No, I don't.

15 Q. Sorry. It is in the middle of the  
16 document in the paragraph beginning "[REDACTED]"

17 [REDACTED]"

18 A. Yes. Okay. Signal abstract, yes.

19 Q. All right. I believe this is a  
20 statement by Scott Moskowitz. Do you agree with  
21 that?

22 A. It appears that way.

23 Q. The sentence states "We do not have  
24 any particular idea if the signal abstract stuff  
25 has a market." Do you see that sentence?

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2 A. I do.

3 Q. What is your recollection of what  
4 signal abstract was generally in the context of  
5 Blue Spike?

6 A. I don't know.

7 Q. Have you ever heard the word "signal  
8 abstract"?

9 A. I am sure from what you are showing  
10 me. However, I don't recall.

11 Q. I'm not asking as a technical matter,  
12 but just in terms of I'm trying to understand the  
13 business plans and activities around Blue Spike's  
14 signal abstract. Can you describe that to me?

15 A. Very tough. Unfortunately --

16 MR. GOLDSTEIN: Objection to form.

17 A. This has been since 2001. We are in  
18 2014. My brother cc'd me probably on a lot of  
19 e-mails just so I would have them. However, that  
20 was more of a formality than anything else.

21 Q. Okay. Give me an idea of how deeply  
22 involved you were or not involved with the  
23 development of business models around Blue  
24 Spike's technology.

25 A. I was not involved very heavily in

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1 Moskowitz - Confidential

2 the business models around Blue Spike. Around

3 Blue Spike's technology.

4 Q. Would you say that your role was  
5 primarily to assist in obtaining fund-raising for  
6 Blue Spike?

7 A. That's correct.

8 Q. [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 Q. Describe for me after you became  
14 involved in 1998, I am trying to understand  
15 chronologically the trajectory of Blue Spike,  
16 Inc. What was the first business development  
17 activities that you can remember at Blue Spike,  
18 Inc.?

19 A. Again, most of the business  
20 development technology that I was involved with  
21 was either dealing with music labels for their  
22 pre-releases or attending SDMI meetings to  
23 network and meet some of the studio labels there.

24 Q. Do you recall any technology  
25 companies -- strike that. Do you recall any



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2 companies asking Blue Spike for any technology

3 other than watermarking?

4 A. Again, when I was there, I considered  
5 most of it all interrelated.

6 Q. What do you mean most of it all  
7 interrelated?

8 A. Sorry. When you are asking about  
9 technology, I consider all the technology that we  
10 did relating to digital watermarking, be it you  
11 call it digital fingerprinting, signal abstract.  
12 To me, again, I was not a technologist. I  
13 consider that all, call it part of the digital  
14 watermarking technology.

15 Q. Okay. Do you make any distinctions  
16 between digital watermarking, digital  
17 fingerprinting and signal abstracts?

18 A. Again, that is not my job to.

19 Q. I just want to understand your  
20 personal non-technical view of that.

21 MR. GOLDSTEIN: Objection as to form.

22 A. Again, this is over ten years ago,  
23 so...

24 Q. Okay. Do you remember somebody named  
25 Peter Cassidy?

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2 A. Vaguely I do, yes.

3 Q. What is your recollection of Peter  
4 Cassidy's role with Blue Spike?

5 A. I think he helped us on marketing, if  
6 I'm not mistaken.

7 Q. Can you remember any other  
8 consultants or employees of Blue Spike, Inc.  
9 between '98 and 2001?

10 A. Mike Berry, who was our CTO. Peter  
11 Cassidy was I think he helped, if I'm not  
12 mistaken, was marketing, and I don't recall many  
13 others.

14 Q. Do you remember a gentleman named  
15 Brett Fasulo, I believe?

16 A. Yes, but while I was there, I don't  
17 think he was a part of Blue Spike while I was  
18 there.

19 Q. What was Brett Fasulo's role with  
20 Blue Spike at any point in time?

21 A. I don't recall. He was part of  
22 another digital content company, I forget the  
23 name of it, in Boston, and Scott was good friends  
24 with him. That's all I recall.

25 Q. Do you remember a gentleman named

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2 Matt Silpe?

3 A. Yes. So Matt Silpe helped on the  
4 business side with me of raising capital.

5 MR. RAMSEY: If we could please mark  
6 the next document as Exhibit 20.

7 (Exhibit 20, Document from Gregg  
8 Moskowitz to Scott Moskowitz, Mike Berry  
9 and Peter Cassidy dated December 5, 2000,  
10 was so marked for identification, as of  
11 this date.)

12 Q. You have been handed a document  
13 marked Exhibit 20 from you to Scott Moskowitz,  
14 Mike Berry and Peter Cassidy dated December 5,  
15 2000. Do you recognize this document?

16 A. I don't recall it, but it seems like  
17 I wrote it.

18 Q. All right. If you could just take a  
19 minute and read the content of Exhibit 20.

20 A. Okay.

21 Q. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

25 A. I don't recall.

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1 Moskowitz - Confidential

2 Q. [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

■ [REDACTED]

9 A. I do.

10 Q. Do you recall what you meant by that  
11 sentence?

12 A. I don't. It has been, you know, 14  
13 years ago almost to the day, so I don't recall  
14 exactly what we were trying to do with [REDACTED].

■ [REDACTED] with

■ [REDACTED]

17 A. Vaguely. Just from this when you  
18 bring up this e-mail.

19 Q. What do you recall about [REDACTED]  
■ [REDACTED] from this e-mail?

21 A. I just remember that they were  
22 looking potentially for [REDACTED]

■ [REDACTED]

■ [REDACTED] I should say.

25 Q. You mention a company called [REDACTED]

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2 in Exhibit 20. Do you see that?

3 A. I do.

4 Q. What was [REDACTED]?

5 A. I don't recall. Just from this, it  
6 seems like they reported, they did a full  
7 reporting system. From my recollection, it  
8 probably was they do the reporting, we do the  
9 monitoring, and together it could be a full  
10 solution, but I don't recall.

11 Q. In general, during the 2000 time  
12 frame, was Blue Spike considering a monitoring  
13 and reporting-type product?

14 A. I vaguely --

15 MR. GOLDSTEIN: Objection as to form.

16 A. I vaguely recall that.

17 Q. What do you recall about that?

18 A. Just from the e-mail, I think, you  
19 know, from what I remember is that they were  
20 trying to identify when music is played in  
21 different mediums to identify when it is played,  
22 and the watermark could identify when certain  
23 content is played.

24 Q. Exhibit 20 mentions ASCAP. Do you  
25 see that?

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2 A. I do.

3 Q. What do you recall regarding Blue  
4 Spike, Inc.'s interactions with [REDACTED]

5 A. [REDACTED]

6 [REDACTED]

7 [REDACTED], so we

8 can -- so they can monitor that and identify when  
9 their content was played.

10 Q. [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 A. I don't recall that.

14 Q. Do you think that Blue Spike, Inc.  
15 did not ever provide a monitoring system?

16 MR. GOLDSTEIN: Objection to form.

17 A. I can't recall if we did or not. I  
18 know we dealt with them in terms of, but I don't  
19 know if actual technology was ever delivered.

20 Q. Do you remember a company called  
21 Liquid Audio?

22 A. Vaguely.

23 Q. What do you recall about Liquid  
24 Audio?

25 A. Just the name. It sounds familiar.

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2 Q. Do you remember any companies in the  
3 Internet broadcasting space that Blue Spike was  
4 interacting with at the time?

5 MR. GOLDSTEIN: Objection as to form.

6 A. I don't recall.

7 MR. RAMSEY: Please mark Exhibit 21.

8 (Exhibit 21, e-mail dated December 5,  
9 2000 from Scott Moskowitz to Gregg  
10 Moskowitz, Mike Berry and Peter Cassidy,  
11 was so marked for identification, as of  
12 this date.)

13 Q. All right. You have been handed  
14 Exhibit 21, which is a December 5, 2000 e-mail  
15 from Scott Moskowitz to you, Mike Berry and Peter  
16 Cassidy. Could you take a moment and look at  
17 Exhibit 21 and let me know if you recognize this  
18 e-mail.

19 A. Okay. I have read it.

20 Q. So this e-mail states -- in this  
21 e-mail Scott Moskowitz states "Watermarking may  
22 not be the best technology for monitoring.  
23 Signal abstracts might be far more accurate and  
24 easier to implement." Do you see that language?

25 A. I do.

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2 Q. Does this document refresh your  
3 recollection regarding any conversations at Blue  
4 Spike regarding signal abstracts?

5 A. No, it does not.

6 Q. In general, do you recall anything  
7 from your time at Blue Spike comparing the use of  
8 watermarking technology versus signal abstract  
9 technology?

10 A. I don't recall.

11 Q. Do you remember your brother Scott  
12 ever talking with you about signal abstract  
13 technologies at all?

14 A. No, I don't recall.

15 Q. Exhibit 21 states further "I have  
16 spoken to a number of companies which currently  
17 have the technology." Do you see that statement?

18 A. I do.

19 Q. Do you remember any companies that  
20 Blue Spike, Inc. was interacting with regarding  
21 signal abstract technology?

22 A. I do not.

23 Q. Do you have any recollection of Blue  
24 Spike, Inc. ever interacting with and partnering  
25 with companies that would provide signal abstract



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2 technology?

3 A. I don't recall.

4 Q. Let me ask you this. Do you intend  
5 to attend the trial and testify in Blue Spike  
6 versus Audible Magic?

7 MR. GOLDSTEIN: Objection as to form.

8 A. No, I do not intend.

9 Q. Do you have any reason to believe  
10 that you will attend trial?

11 MR. GOLDSTEIN: Objection as to form.

12 A. I guess if I am deposed like today,  
13 but no, I'm not planning on it, nor do I know  
14 anything about it.

15 Q. Okay. When you talked with your  
16 brother Scott in approximately 2012, did you  
17 provide any advice about --

18 MR. GOLDSTEIN: Objection to form.

19 Q. -- about whether to file this lawsuit  
20 or not?

21 A. No, I did not.

22 MR. RAMSEY: Please mark Exhibit 22.

23 (Exhibit 22, e-mail dated February 5,  
24 2001 from Scott Moskowitz to Gregg  
25 Moskowitz, Mike Berry and Peter Cassidy,

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2 was so marked for identification, as of  
3 this date.)

4 Q. Exhibit 22 is a February 5, 2001  
5 e-mail from Scott Moskowitz to you, Mike Berry  
6 and Peter Cassidy. Take a moment to review  
7 Exhibit 22 and please let me know if you  
8 recognize it.

9 A. Okay.

10 Q. Do you recognize this document?

11 A. I recognize it from -- I don't know  
12 how to answer that question do I recognize it. I  
13 mean...

14 Q. You don't have any specific  
15 recollection?

16 A. I do not.

17 Q. Do you have any reason to believe  
18 that you were not a recipient of this e-mail?

19 A. I do not.

20 Q. I would actually like you to turn to  
21 the second and third pages. In general, the  
22 second and third pages of Exhibit 22 discuss the  
23 categories digital watermarking, content  
24 scrambling and signal monitoring. Do you see  
25 that?

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2 A. Yes.

3 Q. To the best of your recollection,  
4 what were meant respectively by digital  
5 watermarking, content scrambling and signal  
6 monitoring as a business matter?

7 MR. GOLDSTEIN: Objection as to form.

8 A. Again, I think for my purposes they  
9 were pretty much interrelated where digital  
10 watermarking again was the technology that we  
11 were developing to identify digitized  
12 information.

13 Q. If you could turn particularly to the  
14 third page of Exhibit 22, at the very bottom  
15 under signal monitoring the exhibit states

16 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]."

Do you see  
20 the language I just read?

21 A. I do.

22 Q. Do you recognize any of the companies  
23 whose names I just read?

24 A. I don't recall.

25 Q. You don't recall any of the companies

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2 listed in this list?

3 A. Vaguely, but I mean this is 14 years  
4 ago, so...

5 Q. With the understanding that it was 14  
6 years ago, please, if you could please state for  
7 me, to the best of your recollection, anything  
8 that you remember regarding MuscleFish?

9 A. I do not -- I mean the name, because  
10 I think you just brought up MuscleFish and  
11 DigitalHanse sound familiar, but vaguely. I  
12 don't recall. I don't recall.

13 Q. Do you recall that MuscleFish was a  
14 technical consulting company that Blue Spike  
15 worked with from time to time?

16 MR. GOLDSTEIN: Objection as to form.

17 A. I don't recall.

18 Q. Do you recall any technical  
19 consulting companies that Blue Spike worked with?

20 A. I do not.

21 Q. Do you recall what Cantametrix was?

22 A. No, and I do not. I don't recall.

23 Q. Just to shortcut it, do you recall  
24 anything at all about any of the companies I have  
25 just listed?

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2 A. Sorry, I do not.

3 Q. Do you remember a company called  
4 Punchee, P-u-n-c-h-e-e?

5 A. I don't recall.

6 Q. All right.

7 MR. RAMSEY: If we could mark,  
8 please, Exhibit 23.

9 (Exhibit 23, e-mail dated January 22,  
10 2001 from Gregg Moskowitz to undisclosed  
11 recipients at BlueSpike.com with copy to  
12 Scott Moskowitz, was so marked for  
13 identification, as of this date.)

14 Q. Exhibit 23 is an e-mail dated  
15 January 22, 2001 from you to an e-mail address  
16 called undisclosed recipients at Blue Spike.com  
17 and copying Scott Moskowitz. Could you please  
18 take a look, and it looks like there is an  
19 attachment. Do you agree with that?

20 A. I do.

21 Q. Could you please take a moment and  
22 look at the entirety of Exhibit 23 and describe  
23 to me, to the best of your recollection, what  
24 this is.

25 A. Sure.

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2 Q. Take your time.

3 A. At times, whether it was [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 Q. You see at the beginning on [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 A. It appears so.

11 MR. GOLDSTEIN: Objection as to form.

12 A. It appears that way.

13 Q. What is this document discussing  
14 regarding Blue Spike's activities in January  
15 2001?

16 A. Let me read it.

17 Okay.

18 Q. So let me ask a better question  
19 because the question was basically the entire  
20 contents of the document. Not too good. It is  
21 true that Exhibit 23 discusses SDMI and Blue  
22 Spike's participation, right?

23 A. That's correct.

24 Q. Do you believe that as of January  
25 2001 Blue Spike was still involved in the SDMI

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2 process?

3 MR. GOLDSTEIN: Objection as to form.

4 A. It appears that way.

5 Q. Do you recall when Blue Spike's  
6 participation in the SDMI process ended?

7 A. I do not. I don't recall.

8 Q. I would like you to turn in  
9 particular to the fourth page of Exhibit 23.

10 A. This is 1, right, the first one?

11 Q. Yes.

12 A. Okay.

13 Q. On the fourth page of Exhibit 23  
14 there is a section entitled "The Monitoring  
15 Business." Do you see that?

16 A. I do.

17 Q. What is your understanding of what  
18 the monitoring business was at Blue Spike?

19 A. Again, it was to use the digital  
20 watermarks to identify when digitized music was  
21 played at different places, where we could  
22 identify when they were played and then report  
23 that to the ASCAPs and BMIs of the world.

24 Q. Exhibit 23 states "Blue Spike has  
25 also recently begun to explore strategic partners

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2 in the tracking and monitoring space for music,  
3 commercials and promotional content being  
4 broadcast over the radio, Internet or via  
5 satellite." Do you see that language?

6 A. I do.

7 Q. Do you recall what strategic partners  
8 Blue Spike was exploring tracking and monitoring  
9 with?

10 A. I don't recall.

11 Q. Do you believe MuscleFish LLC was a  
12 strategic partner?

13 MR. GOLDSTEIN: Objection as to form.

14 A. I do not.

15 Q. Do you believe that [REDACTED]

16 [REDACTED]?

17 MR. GOLDSTEIN: Objection as to form.

18 A. I do not recall.

19 Q. Do you have any recollection at all  
20 of any strategic partner with which -- in the  
21 tracking and monitoring space that Blue Spike was  
22 engaged with?

23 A. I don't recall.

24 Q. It is true that Exhibit 23 was sent  
25 by you, correct?



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2 A. Correct. Since I was the CFO, I was  
3 responsible for sending all shareholder updates.

4 Q. Did you draft the content of Exhibit  
5 23 yourself or somebody else?

6 A. I don't recall.

7 Q. In general, do you recall whether you  
8 were the one who was drafting the content of  
9 shareholder reports or somebody else?

10 MR. GOLDSTEIN: Objection as to form.

11 A. The only thing I can recall is I was  
12 definitely responsible for drafting some of it.  
13 I don't know if I was responsible for drafting  
14 all of this particular letter.

15 Q. In general, do you recall were there  
16 particular substantive areas that you were  
17 generally tasked with drafting in this type of  
18 report versus what you were not?

19 MR. GOLDSTEIN: Objection as to form.

20 A. The only thing I recall is anything  
21 that dealt with technology I was not and on the  
22 business side I drafted.

23 Q. So is it true that in about 2001 Blue  
24 Spike really slowed down operations? Is that  
25 fair?

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2 MR. GOLDSTEIN: Objection as to form.

3 A. I know my role sometime in 2001  
4 decreased and I moved on.

5 Q. Do you have an understanding that in  
6 2001 the number of employees or consultants  
7 involved with Blue Spike became much reduced  
8 compared to earlier years?

9 MR. GOLDSTEIN: Objection to form.

10 A. That seems reasonable.

11 Q. Do you have a recollection of the  
12 events leading to that situation in 2001?

13 MR. GOLDSTEIN: Objection as to form.

14 A. No, it was more just time, it was  
15 time for myself to move to a different direction.

16 Q. Do you recall that in 2001 Blue Spike  
17 had spent a substantial part of the money that it  
18 had raised to try to succeed as a business?

19 MR. GOLDSTEIN: Objection as to form.

20 A. We did spend money, yes.

21 Q. Is that why in 2001 you and others  
22 became less involved with Blue Spike? In other  
23 words, it ran out of funding?

24 MR. GOLDSTEIN: Objection as to form.

25 A. To my recollection, it didn't run out

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2 of funding. It was just, again where I was in my  
3 life, it was time to make a decision to look at  
4 other areas of interest.

5 Q. Okay. Were you involved full time  
6 between '98 and 2001 with Blue Spike?

7 A. I don't recall if '98 was full time,  
8 but '99, 2000 definitely full time. 2001 I don't  
9 recall exactly when I started to decrease my  
10 interest, my involvement, in Blue Spike.

11 Q. Did you work for any other companies  
12 other than Blue Spike during 1998 and 2000?

13 A. '99 and 2000 I did not. I don't  
14 recall if I did in '98, and I don't recall if I  
15 did in 2001.

16 Q. So it is fair to say that between '99  
17 and 2001 Blue Spike was your full-time primary  
18 job?

19 A. Yes.

20 Q. Do you have any understanding of the  
21 rights of Blue Spike, Inc. shareholders with  
22 respect to the pending litigation brought by Blue  
23 Spike, LLC?

24 A. I do not.

25 MR. RAMSEY: If we could mark Exhibit

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2 24.

3 (Exhibit 24, Document headed "Blue  
4 Spike, Inc. Corporate Profile August  
5 2000", was so marked for identification,  
6 as of this date.)

7 Q. Please take a look at Exhibit 24,  
8 which is a document labeled "Blue Spike, Inc.  
9 Corporate Profile August 2000." Just take a  
10 moment, and once you've had a chance to take a  
11 look at this document, let me know if you recall  
12 it.

13 MR. GOLDSTEIN: Have these documents  
14 been produced in other depositions or is  
15 this the first time --

16 MR. RAMSEY: These are the first time  
17 these have been produced in any  
18 deposition, the ones that we are seeing  
19 today.

20 MR. GOLDSTEIN: Okay. Thank you.

21 A. I recall this document.

22 Q. What is Exhibit 24?

23 A. It was just an overview of the  
24 company, the corporate profile of Blue Spike.

25 Q. If you look at the page labeled at

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2 the bottom right BLU 0205991.

3 A. Yes.

4 Q. I'm sorry. Please take a look at the  
5 page ending in 992 in Exhibit 24. Are you there?

6 A. I'm there.

7 Q. In Exhibit 24 there is a reference to  
8 something called a trusted transaction server.  
9 Do you see that?

10 A. I do.

11 Q. Do you have a recollection of what a  
12 trusted transaction server is?

13 A. I do not.

14 Q. If you could briefly look through  
15 Exhibit 24 and just let me know if you see any  
16 references to signal monitoring.

17 A. Signal monitoring?

18 Q. Yes.

19 MR. GOLDSTEIN: Objection as to form.

20 A. I do not.

21 Q. Do you have any recollection of  
22 whether as of August 2000 Blue Spike, Inc. was  
23 involved in the business of signal monitoring?

24 A. I don't recall.

25 Q. Do you have any recollection of any

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2 point in time in which Blue Spike in particular  
3 became involved in the business of signal  
4 monitoring?

5 A. I don't recall.

6 Q. Were you familiar with the  
7 individuals on the board of advisors of Blue  
8 Spike, Inc.?

9 A. I did not know them personally, no.

10 Q. Have you ever interacted with David  
11 Farber, Stephen Kane, J.S.G. Boggs or John  
12 Kabira?

13 A. I did not.

14 Q. If you look at the very last page of  
15 Exhibit 24, what is your understanding of what  
16 the last page of Exhibit 24 represents?

17 A. Financial projections at the time  
18 that this document was created.

19 [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

23 A. It appears that way.

24 Q. Do you know if that ever happened,  
25 Blue Spike ever had revenue --

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2 MR. GOLDSTEIN: Objection as to form.

3 Q. -- as projected here?

4 A. It did not have it.

5 Q. After the point in 2001 at which Blue  
6 Spike ran out of money, do you have an  
7 understanding --

8 MR. GOLDSTEIN: Objection as to form.

9 Q. Do you have an understanding of what  
10 happened to the business at that point?

11 A. I do not. I don't recall.

12 Q. Do you know if the company continued  
13 to operate?

14 A. I do know, yes, it did continue to  
15 operate.

16 Q. Describe for me your understanding of  
17 what Blue Spike, Inc.'s operations were after  
18 2001?

19 A. I don't recall.

20 Q. Did you stay in touch with your  
21 brother regarding Blue Spike, Inc. after 2001?

22 A. I stayed in touch with my brother,  
23 but regarding Blue Spike, we spoke, I don't  
24 recall exactly what we discussed about Blue  
25 Spike, but most of our conversations when we

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2 spoke were not about Blue Spike.

3 Q. Did you continue to provide any  
4 guidance or advice or any type of role with  
5 respect to Blue Spike after 2001?

6 A. I don't recall.

7 Q. Do you ever recall talking to your  
8 brother Scott about his patents?

9 A. My brother has a pretty vast  
10 portfolio of patents. Yes.

11 Q. And do you recall ever talking to  
12 Scott about his patents?

13 A. Scott brought them up, but I don't  
14 recall anything in particular.

15 Q. Have you ever talked to your brother  
16 Scott about the patents asserted in the present  
17 series of lawsuits brought by Blue Spike, LLC?

18 A. No.

19 Q. Is it your understanding that -- do  
20 you have any understanding of what Blue Spike,  
21 LLC is?

22 A. Today?

23 Q. Yes. Blue Spike, LLC.

24 A. I'm sorry, can you repeat that.

25 Q. Are you familiar that there is an



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2 entity called Blue Spike, LLC?

3 A. Oh. I'm not familiar with Blue  
4 Spike, LLC.

5 Q. Are you generally aware that Blue  
6 Spike, LLC is a company that was formed by your  
7 brother to assert patents?

8 A. I didn't know it was to assert  
9 patents, no.

10 Q. But in general, you do have an  
11 understanding that Scott Moskowitz created an  
12 entity to file lawsuits asserting patents?

13 MR. GOLDSTEIN: Objection as to form.

14 A. No. Again, I do not know what Blue  
15 Spike, LLC is.

16 Q. Have you had any role at all in  
17 providing advice or guidance regarding this or  
18 any other lawsuit?

19 A. I do not.

20 Q. In particular, have you had any role  
21 or involvement in providing guidance or advice to  
22 your brother Scott regarding this or any other  
23 lawsuit?

24 A. No.

25 Q. Do you think your brother Scott would

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2 listen to your advice regarding any lawsuit?

3 MR. GOLDSTEIN: Objection as to form.

4 A. I have no comment on that.

5 MR. RAMSEY: Let's go off the record  
6 for just a minute.

7 THE VIDEOGRAPHER: The time is 6:15  
8 p.m. We are off the record.

9 (Recess taken from 6:15 p.m. to 6:19  
10 p.m.)

11 THE VIDEOGRAPHER: The time is 6:19  
12 p.m. We are on the record.

13 MR. RAMSEY: If we could mark Exhibit  
14 25.

15 (Exhibit 25, e-mail dated

16 [REDACTED]  
17 [REDACTED], was so  
18 marked for identification, as of this  
19 date.)

20 BY MR. RAMSEY:

21 Q. Exhibit 25 is a February 16, 2000  
22 e-mail from you to [REDACTED]  
23 [REDACTED]

24 Do you recognize this document?

25 A. No, I don't recognize it. Do you

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2 want me to read it?

3 Q. It appears to me that in Exhibit 25

4 [REDACTED]

5 [REDACTED] Does that sound accurate?

6 A. It appears that way, yes.

7 Q. Do you think you were e-mailing about  
8 patents or just general technology issues?

9 A. General technology it appears.

10 Q. Did you regularly review documents  
11 regarding other competing technologies in the  
12 space when you were with Blue Spike?

13 A. I don't recall.

14 Q. In Exhibit 25, you state "They claim  
15 the following." Do you know who "they" refers to  
16 in Exhibit 25?

17 A. I do not.

18 Q. In --

19 A. It seems Audio Track, I guess, right?

20 Q. What is your recollection of what  
21 Audio Track is?

22 A. I don't recall.

23 Q. In Exhibit 25 you state "They claim  
24 the following: Use psycho-acoustic compression  
25 technology to provide a secure watermark." Do

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2 you see that?

3 A. I do.

4 Q. What is your understanding of what  
5 psycho-acoustic compression technology is?

6 A. I am sure I got this off -- it  
7 appears I got this off of a website potentially  
8 or a document that I have seen, and I passed this  
9 along to Mike Berry and Scott.

10 Q. It looks like a pretty technical  
11 description in Exhibit 25.

12 A. Correct, and it appears -- I wouldn't  
13 have written something like this. It appears  
14 that I probably saw it either where there was a  
15 conference or a website, but I have no idea.

16 Q. You believe that you simply took the  
17 technical description in Exhibit 25 from some  
18 other source and did not generate it yourself?

19 A. I think that is fair.

20 Q. Is it accurate to say that you do not  
21 have enough technical knowledge to discuss the  
22 type of technical details in Exhibit 25?

23 A. I think that is fair.

24 Q. Do you have any technical background?

25 A. Zero.

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2 Q. Just briefly, what is your  
3 educational background?

4 A. I am a CPA. I am a finance guy. I  
5 am a numbers guy.

6 Q. All right. Do you recall a company  
7 called Arbitron?

8 A. Vaguely.

9 Q. To the best of your recollection what  
10 was Arbitron?

11 A. I think it was similar to like a BMI  
12 and an ASCAP.

13 Q. Do you recall what Blue Spike, Inc.'s  
14 interactions or business with Arbitron was?

15 A. I don't recall.

16 Q. Are you familiar with an entity  
17 called Wisteria Trading?

18 A. To my recollection, that was when --  
19 that was pre-Blue Spike that held the patents.

20 Q. Did you ever have any involvement  
21 with Wisteria Trading?

22 A. Just through my brother.

23 Q. Did you ever have any involvement  
24 with a company called The Dice Company?

25 A. Again, that was pre-Blue Spike as

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2 well, and that was, I think that is the evolution  
3 of how Blue Spike became Blue Spike.

4 Q. So Blue Spike, Inc. evolved from The  
5 Dice Company?

6 A. Correct.

7 Q. But you were not personally involved  
8 with The Dice Company?

9 A. Correct.

10 Q. I may have asked you this, I'm sorry.  
11 Did you participate ever in Blue Spike, Inc.'s  
12 patent prosecution activities?

13 A. I did not.

14 Q. Do you recall a company called  
15 tunes.com?

16 A. I do not.

17 Q. Do you recall a company called  
18 Intertrust?

19 A. It vaguely is an encryption company.

20 Q. Do you recall did Blue Spike, Inc.  
21 consider Intertrust to be a competitor?

22 A. A different type of technology.  
23 Encryption versus watermarking.

24 Q. What is the difference, to the best  
25 of your understanding, between Intertrust's

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2 technology and Blue Spike's technology?

3 A. That I don't know. I just know we  
4 were not an encryption company.

5 Q. Do you remember a company called  
6 Prosoniq, P-r-o-s-o-n-i-q?

7 A. I do not.

8 Q. Do you remember a company called  
9 Digital Music On Demand abbreviated to DMOD?

10 A. To my recollection, that is where  
11 Brett Fasulo worked, if I'm not mistaken.

12 Q. Okay. Do you recall what Blue  
13 Spike's business with DMOD was?

14 A. No, I don't.

15 Q. Do you recall what was the role of  
16 Mike Berry at Blue Spike, Inc.?

17 A. He was the CTO, chief technology  
18 officer.

19 Q. Did you interact regularly with Mike  
20 Berry?

21 A. Yes. I mean again he was in  
22 Albuquerque and I was in New York.

23 Q. Describe for me, did you ever  
24 interact with Mike Berry regarding technology  
25 issues?

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2 A. More so being the liaison between if  
3 we were dealing with BMI or one of the music  
4 labels who wanted some technology, I would  
5 forward that on to Mike Berry.

6 Q. Okay. Was Mike Berry involved in  
7 Blue Spike's standard-setting activities?

8 A. You mean from SDMI?

9 Q. For example, SDMI.

10 A. Yes.

11 Q. Did he attend SDMI meetings and the  
12 like?

13 A. He did.

14 Q. So did Mr. Berry write code?

15 A. I don't know. I think so. Yes. He  
16 is their CTO.

17 Q. Do you recall whether there were ever  
18 any subcontractors that Mr. Berry worked with on  
19 behalf of Blue Spike?

20 A. I don't recall.

21 Q. Other than yourself, Scott Moskowitz,  
22 Mike Berry and Peter Cassidy, do you recall any  
23 other individuals who were regularly involved in  
24 the business of Blue Spike?

25 A. And Matthew Silpe.



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1 Moskowitz - Confidential

2 Q. Did he have any role in Blue Spike  
3 other than -- did Mr. Silpe have any involvement  
4 with Blue Spike other than raising money?

5 A. No.

6 Q. Do you recall an individual named  
7 Matt Ingalls, I-n-g-a-l-l-s?

8 A. I do not.

9 Q. Do you recall a gentleman named Mark  
10 Cooperman?

11 A. I do.

12 Q. Describe for me your recollection of  
13 Mark Cooperman.

14 A. Mark Cooperman used to be a work  
15 colleague of my brother's.

16 Q. And you understand that Mr. Cooperman  
17 and Mr. Scott Moskowitz were involved in  
18 litigation with each other, is that right?

19 A. I do.

20 Q. Describe for me the nature of the  
21 litigation between Mr. Cooperman and Scott  
22 Moskowitz.

23 MR. GOLDSTEIN: Objection as to form.

24 A. I just think they disagreed on who  
25 owned the rights to the technology.

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1 Moskowitz - Confidential

2 Q. Do you have any understanding of how  
3 the litigation between Mr. Cooperman and Scott  
4 Moskowitz was resolved, if it was resolved?

5 A. To the best of my knowledge, it was  
6 resolved.

7 Q. Do you have any understanding of  
8 how -- the terms of the resolution between Mr.  
9 Cooperman and Scott Moskowitz?

10 A. I do not.

11 Q. Do you recall Blue Spike, Inc. ever  
12 engaging in the licensing of technology from  
13 Lucent?

14 A. I can't recall that.

15 Q. Do you ever recall Blue Spike, Inc.  
16 working on any type of compression technology?

17 A. I don't recall.

18 Q. I am going to name some names. Do  
19 you know anybody named Earl Ewald?

20 A. I do not.

21 Q. Do you recognize the name Tom Blum?

22 A. I do not recall.

23 Q. Do you recognize the name Doug  
24 Keislar?

25 A. I do not recognize it.

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1 Moskowitz - Confidential

2 Q. Do you recognize the name Jim  
3 Wheatan?

4 A. No.

5 Q. Who at Blue Spike, Inc. between 1998  
6 and 2001 do you believe would have the most  
7 knowledge of the different types of business  
8 models that Blue Spike, Inc. was considering or  
9 implemented?

10 A. Scott.

11 Q. Who at Blue Spike, Inc. between 1998  
12 and 2001 do you think would have the most  
13 knowledge about the technical approaches that  
14 Blue Spike was taking toward its products?

15 A. Mr. Berry and Scott.

16 Q. Between -- comparing between Scott  
17 Moskowitz and Mike Berry, who do you think was  
18 most involved in actually creating technology for  
19 Blue Spike?

20 A. They both were.

21 Q. Is it your understanding that Scott  
22 Moskowitz, is he able to write software?

23 A. I don't know.

24 Q. Do you have any understanding of the  
25 level of technical capability of Scott Moskowitz?

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1 Moskowitz - Confidential

2 A. I do not.

3 Q. [REDACTED]

4 [REDACTED]

5 A. To the best of my knowledge, it was  
6 similar to the relationships with the rest of the  
7 music labels where we were trying to provide them  
8 with our technology.

9 Q. Do you remember ever interacting with  
10 a gentleman named Andreas Sappelt?

11 A. I don't recall.

12 Q. Do you recall a company called [REDACTED]

13 [REDACTED]

14 A. I don't recall.

15 Q. Do you recall a company called  
16 TunePrint?

17 A. I do not.

18 Q. Do you recall a company called Scour?

19 A. If I'm not mistaken, I think that was  
20 the Napster, if I am familiar, but I don't recall  
21 any relationship with them.

22 Q. Do you recall discussing Napster in  
23 your time at Blue Spike, Inc.?

24 A. Just that it was a very popular  
25 company at the time for file sharing.

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1 Moskowitz - Confidential

2 Q. Did Blue Spike, Inc. believe that it  
3 had technology to assist Napster?

4 MR. GOLDSTEIN: Objection as to form.

5 A. We never tried to reach an agreement  
6 with Napster, so no.

7 Q. Are you familiar with a company  
8 called Emusic?

9 A. No.

10 Q. Do you recall interacting on behalf  
11 of Blue Spike with the company [REDACTED]?

12 A. No.

13 Q. Do you recall a company called  
14 [REDACTED]?

15 A. I do not.

16 Q. Did you do anything to prepare for  
17 your deposition today?

18 A. Yes. I read whatever I was given,  
19 the deposition.

20 Q. Did you meet with Mr. Goldstein just  
21 in general regarding today's deposition?

22 A. Just today.

23 Q. Approximately how much time did you  
24 spend with Mr. Goldstein today to prepare?

25 A. About ten minutes.

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MR. RAMSEY: I think I'm done  
actually. I have no further questions for  
you. Thank you for your time today.

THE VIDEOGRAPHER: This concludes  
today's deposition for today. The time is  
6:33 p.m. We are off the record.

(Time noted: 6:33 p.m.)

Subscribed and sworn to  
before me this \_\_\_\_ day of \_\_\_\_\_, 2014.

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C E R T I F I C A T I O N

I, Joseph R. Danyo, a Shorthand Reporter and Notary Public, within and for the State of New York, do hereby certify:

That I reported the proceedings in the within entitled matter, and that the within transcript is a true record of such proceedings.

I further certify that I am not related, by blood or marriage, to any of the parties in this matter and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 24th day of December, 2014.

---

JOSEPH R. DANYO

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I N D E X

Witness

Page

GREGG MOSKOWITZ

6

E X H I B I T S

No.

Page

Exhibit 19 e-mail exchange between Scott Moskowitz and 19

Exhibit 20 Document from Gregg Moskowitz to Scott 25

Moskowitz, Mike Berry and Peter Cassidy

dated December 5, 2000

Exhibit 21 e-mail dated December 5, 2000 from Scott 29

Moskowitz to Gregg Moskowitz, Mike Berry

and Peter Cassidy

Exhibit 22 e-mail dated February 5, 2001 from Scott 31

Moskowitz to Gregg Moskowitz, Mike Berry

and Peter Cassidy

Exhibit 23 e-mail dated January 22, 2001 from Gregg 35

Moskowitz to undisclosed recipients at

BlueSpike.com with copy to Scott Moskowitz

Exhibit 24 Document headed "Blue Spike, Inc. Corporate 42

Profile August 2000"

Exhibit 25 e-mail dated February 16, 2000 from Gregg 48

Moskowitz to Mike Berry and Scott Moskowitz

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ERRATA SHEET

Name of Case: Blue Spike v. Texas Instruments  
Date of Deposition: December 12, 2014  
Name of Deponent: GREGG MOSKOWITZ

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\_\_\_\_\_  
Signature of Deponent

Subscribed and sworn before me  
this\_\_\_\_day of\_\_\_\_\_, 2014.  
\_\_\_\_\_  
(Notary Public) My Commission Expires:\_\_\_\_\_